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No. 31] NEW DELHI, JULY 24—JULY 30, 2016, SATURDAY/SRAVANA 2—SRAVANA 8, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 29 जून, 2016

का.आ. 1489.—भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 8 की उप-धारा (4) के साथ पठित उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के कार्यपालक निदेशक श्री एन.एस. विश्वनाथन (जन्म तिथि: 27.06.1958) को 04 जुलाई, 2016 को या उसके बाद पदभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, श्री एच.आर. खान के स्थान पर भारतीय रिजर्व बैंक के डिप्टी-गवर्नर के पद पर नियुक्त करती है।

[फा. सं. 1/1/2011-बीओ-1]

एस. आर. मेहर, उप सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 29th June, 2016

S.O. 1489.— In exercise of the powers conferred by clause (a) of Sub-section 1 read with Sub-section (4) of Section 8 of the Reserve Bank of India Act, 1934, the Central Government hereby appoints Shri N.S. Vishwanathan (DOB: 27.06.1958), Executive Director, Reserve Bank of India as Deputy Governor, Reserve Bank of India for a

period of three years from the date of his taking over charge of the post on or after 4th July, 2016 or until further order, whichever is earlier vice Shri H.R. Khan.

[F. No. 1/1/2011-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1490.— भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (3) में विनिर्दिष्ट व्यक्ति को उक्त सारणी के कालम (2) में विनिर्दिष्ट व्यक्ति के स्थान पर कालम (1) में विनिर्दिष्ट स्टेट बैंक आफ पटियाला में तत्काल प्रभाव से और अगले आदेशों तक, निदेशक नामित करती है:-

क्रम सं.	बैंक का नाम	वर्तमान निदेशक का नाम	प्रस्तावित व्यक्ति का नाम
	1	2	3
1.	स्टेट बैंक आफ पटियाला	श्री जे.एल. नेगी	श्री पी. विजयकुमार, मुख्य महाप्रबंधक, डीसीएम, करेंसी प्रबंधन विभाग, भारतीय रिजर्व बैंक, अमर भवन, चौथा तल, सर पी. एम. रोड, मुम्बई-400001

[फा.सं. 6/3/2011-बीओ-1]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 11th July, 2016

S.O. 1490.— In exercise of the powers conferred by clause (b) of the sub-section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominate the person specified in column (3) of the table below as Director of State Bank of Patiala specified in column (1) thereof in place of the person specified in column (2) of said Table, with immediate effect and until further orders:-

SI. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	1	2	3
1.	State Bank of Patiala	Shri J.L. Negi	Shri P. Vijayakumar, CGM, DCM, Department of currency Management, Reserve Bank of India, Amar Building, 4 th Floor, Sir P.M. Road, Mumbai- 400 001.

[F.No. 6/3/2011-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1491.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा, यह घोषणा करती है कि उक्त अधिनियम की धारा 16 की उप-धारा (1) के उपबंध श्री अंशुमन शर्मा, उप सचिव एवं इलाहाबाद बैंक के बोर्ड में सरकारी नामिती निदेशक पर लागू नहीं होंगे, जहां तक इसका संबंध श्री अंशुमन शर्मा को भारतीय डाक भुगतान बैंक के बोर्ड में सरकारी नामिती निदेशक नामित करने से है।

[फा.सं. 7/2/2012-बीओ-1]

ज्ञानोतोष राय, अवर सचिव

New Delhi, the 11th July, 2016

S.O. 1491.— In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declare that the provisions of sub-section (1) of Section 16 of the said Act shall not apply to Shri Anshuman Sharma, Deputy Secretary

and Government Nominee Director on the Board of Allahabad Bank in so far as it relates to the nomination of Shri Anshuman Sharma as Government Nominee Director on the Board of India Postal Payments Bank.

[F.No. 7/2/2012-BO-I]

JNANATOSH ROY, Under Secy.

(राजस्व विभाग)

(हिंदी अनुभाग - 2)

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1492.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में राजस्व विभाग के केन्द्रीय उत्पाद शुल्क और सीमाशुल्क बोर्ड के अधीन सीमाशुल्क आयुक्त (दिल्ली हवाई अड्डा) का कार्यालय, नई दिल्ली, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्य साधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/1/2015-ए.डी. (हिंदी-2)]

मीमांसक, संयुक्त निदेशक (राजभाषा)

(Department of Revenue)

(Hindi Section-2)

New Delhi, the 5th July, 2016

S.O. 1492.—In pursuance of sub rule (4) of Rule 10 the Official Languages (Use for Official purpose of the Union) Rules, 1976, the Central Government hereby Notifies Office of the Commissioner Customs (Delhi Airport), New Delhi under CBEC, D/O Revenue, where more than 80% staff have acquired the working knowledge of Hindi :

[F. No. E-11017/1/2015-AD(Hindi-2)]

MIMANSAK, Jt. Director (OL)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 14 जुलाई, 2016

का. आ. 1493.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, महाराष्ट्र सरकार, गृह विभाग, महाराष्ट्र की पत्र/अधिसूचना सं.—पी.सी.आर./0815/सी.आर. 476/विशेष-6 दिनांक 05 नवम्बर 2015 द्वारा प्राप्त सहमति से थाना एम.आई.डी. सी. जिला लातूर प्राथमिकी सं. 80/2014 अंतर्गत धारा 302/354/376(2)(जी)/ 364/203/201/120 (बी)/34 भा.द.सं. में दर्ज कुमारी कल्पना गिरी की हत्या के सम्बंध में अथवा उपर्युक्त अपराधों के संबंध में या उससे सम्बद्ध प्रयास, दुष्प्रेरण तथा षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किये गये अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध या अपराधों का अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और आधिकारिता व विस्तार सम्पूर्ण महाराष्ट्र राज्य पर करती है।

[फा. सं. 228/40/2015—एवीडी—II]

मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 14th July, 2016

S.O. 1493.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Maharashtra, Home Department Mantralaya, Madam Cama Marg, Mumbai, vide Notification No. PCR/0815/C.R. 476/Special-6 dated 05.11.2015, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Maharashtra for investigation of the case of M.I.D.C. Police Station, Latur C.R. No. 80/2014 under sections 302, 354, 376 (2)(g), 364, 203, 201, 120-B and 34 of the Indian Penal Code, 1860 (Act No. 45 of 1860) relating to the murder of Kalpana Giri, Latur and attempts, abetments and conspiracies in relation to or in connection with the offences in the said case and any other offence committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/40/2015-AVD-II]

MD. NADEEM, Under Secy.

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1494.— केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा 1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और राजेश शर्मा बनाम राज्य और अन्य के मामले में ओडब्ल्यूपी सं. 663/2015 के अंतर्गत पारित दिनांक 08/02/2016 के माननीय उच्च न्यायालय के आदेशों के अनुपालन में जम्मू और कश्मीर राज्य सरकार, गृह विभाग, सिविल सचिवालय श्रीनगर/जम्मू की दिनांक 29 मार्च, 2016 की अधिसूचना संख्या एसआरओ 100 संख्या/गृह/ओडब्ल्यूपी/121/2015/1653 की सहमति से, विशाल शर्मा सुपुत्र राजेश शर्मा, निवासी, नजदीक सब्जी मंडी विजयपुर साम्बा के लापता होने के मामले के बारे में, पुलिस थाना विजयपुर में दर्ज प्राथमिकी रिपोर्ट संख्या 06/2015 के अंतर्गत रणबीर दंड संहिता की धारा 363क, सम्वत् 1989 (1989 की अधिनियम संख्या II)(1932 एडी) से उद्भूत अपराधों के अन्वेषण के सम्बंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार एतद् द्वारा संपूर्ण जम्मू और कश्मीर राज्य पर करती है।

[फा. सं. 228/12/2016—एवीडी—II]
मो. नदीम, अवर सचिव

New Delhi, the 19th July, 2016

S.O. 1494.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946) and in compliance to orders of the Hon'ble High Court dated 08.02.2016 passed in OWP No.663/2015 titled Rajesh Sharma Vs. State and others, the Central Government with the consent of the State Government of Jammu and Kashmir, Home Department, Civil Secretariat, Srinagar/Jammu vide Notification SRO 100 No.Home/OWP/121/2015/1653 dated 29th March, 2016, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the state of Jammu and Kashmir for investigation of the offences(s) arising out of FIR No.06/2015 under Section 363-A of the Ranbir Penal code, Samvat 1989 (Act No.II of 1989) (1932.A.D) regarding missing case of Vishal Sharma S/o Rajesh Sharma R/o Near Sabzimandi Vijaypur, Samba, registered in Police Station, Vijaypur.

[F. No. 228/12/2016-AVD-II]
MD. NADEEM, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 12 जुलाई, 2016

का.आ. 1495.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में आकाशवाणी महानिदेशालय, प्रसार भारती (सूचना और प्रसारण मंत्रालय) के अधीनस्थ कार्यालय, प्रसार भारती अभिलेखागार (केन्द्रीय व उत्तरी क्षेत्र) नई दिल्ली जिसके 80% से अधिक कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/06/2012—हिंदी]
प्रियम्बदा, निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 12th July, 2016

S.O. 1495.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Prasar Bharti Archieves (Central and North Zone), New Delhi under Directorate General, All India Radio, Prasar Bharti (Ministry of Information and Broadcasting) more than 80% of the staff whereof have acquired the working knowledge of Hindi.

[F. No. E-11017/06/2012-Hindi]
PRIYAMVADA, Director (O.L.)

कृषि मंत्रालय

(कृषि अनुसंधान एवं शिक्षा विभाग)

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1496.—केन्द्रीय सरकार कृषि मंत्रालय कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा.कृ.अ.प. क्षेत्रीय केन्द्र आलू अनुसंधान केन्द्र, मुथोराई, उदगमंडलम, नीलगिरी, तमिलनाडू को जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[फा. सं. 13-10/2009-हिन्दी/151]

राजेश कुमार, अवर सचिव

MINISTRY OF AGRICULTURE**(Department of Agricultural Research and Education)**New Delhi, the 20th July, 2016

S.O. 1496.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research and Education hereby notifies the ICAR, Regional Centre, Central Potato Research Station, Muthorai, Udhagamandalam, The Nilgiris, Tamilnadu where more than 80% of staff have acquired the working knowledge of Hindi.

[No. 13-10/2009-Hindi/151]

RAJESH KUMAR, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1497.—17.08.2006 को अधिसूचित मुख्य वैद्युत निरीक्षक और वैद्युत निरीक्षक की अर्हता, शक्ति और कार्य नियम, 2006 के साथ पठित विद्युत अधिनियम, 2003 (2003 का 36) की धारा 162 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतद्वारा बीएमआरसीएल के श्री संजीव कुमार सिन्हा, मुख्य अभियंता (रोलिंग स्टॉक-II) को इस अधिसूचना की तारीख से बीएमआरसीएल में उनके कार्यकाल तक, उपर्युक्त नियम में उल्लिखित अर्हता और शर्त को पूरा करने के अध्यक्षीन बेंगलोर मेट्रो रेल कारपोरेशन लिमिटेड के लिए वैद्युत निरीक्षक के रूप में नियुक्त करती है। श्री संजीव कुमार सिन्हा को श्री देवेन्द्र दत्त मिश्रा, मुख्य वैद्युत अभियंता, बीएमआरसीएल, जिन्हें उनके त्याग-पत्र के पश्चात मुक्त किया जा चुका है, के स्थान पर नियुक्त किया जाता है।

उपर्युक्त उल्लिखित अधिकारी समय-समय पर यथासंशोधित केंद्रीय विद्युत प्राधिकरण (सुरक्षा और विद्युत आपूर्ति से संबंधित उपाय) विनियम, 2010 में दी गई प्रक्रिया के अनुसार, बीएमआरसीएल के अधिकार वाले क्षेत्रों में प्रचालनाधीन वैद्युत कार्यों, वैद्युत संस्थापनाओं तथा वैद्युत रोलिंग स्टॉक अथवा बीएमआरसीएल के नियंत्रणाधीन/बीएमआरसीएल से संबंधित कार्यों तथा वैद्युत संस्थापनाओं के संबंध में अधिकारों का प्रयोग करेंगे और अपना कार्य निष्पादित करेंगे।

बीएमआरसीएल यह सुनिश्चित करेगा कि श्री संजीव कुमार सिन्हा, बीएमआरसीएल में मुख्य अभियंता (रोलिंग स्टॉक-II) के रूप में दिये गये कार्यों के संबंध में वैद्युत निरीक्षक नहीं होंगे।

वैद्युत निरीक्षक के रूप में नियुक्त अधिकारी वह प्रशिक्षण लेंगे जिसे केंद्र सरकार इस उद्देश्य के लिए आवश्यक समझे तथा ऐसा प्रशिक्षण सरकार की संतुष्टि के स्तर तक पूरा किया जाएगा।

[फा.सं.-42/5/2016-आरएण्डआर]

ज्योति अरोरा, संयुक्त सचिव

MINISTRY OF POWERNew Delhi, 20th July, 2016

S.O. 1497.—In exercise of the powers conferred by sub-section(1) of Section 162 of the Electricity Act, 2003 (36 of 2003) read with Qualifications, Powers and Functions for Chief Electrical Inspector and Electrical Inspectors Rules, 2006 notified on 17.8.2006, the Central Government hereby appoints Sh. Sanjeev Kumar Sinha, Chief Engineer (Rolling Stock-II), BMRCL as Electrical Inspector for Bangalore Metro Rail Corporation Ltd, from the date of this Notification till his tenure in BMRCL, subject to fulfilment of the Qualification and Condition mentioned in the above Rule. Sh. Sanjeev Kumar Sinha is appointed in place of Sh. Devendra Dutta Mishra, Chief Electrical Engineer, BMRCL, who have been relieved after his resignation.

The above mentioned officer shall exercise the powers and perform his functions in respect of electrical works, electrical installations and electrical rolling stock in operation within the areas occupied by the BMRCL or in respect of works and all electrical installations under the control of BMRCL/belonging to BMRCL as per the procedure provided in Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulations, 2010, as amended from time to time.

BMRCL will ensure that Sh. Sanjeev Kumar Sinha will not be the Electrical Inspector in respect of the work assigned to him as Chief Engineer (Rolling Stock-II) in BMRCL.

The person appointed as Electrical Inspector shall undergo such training as the Central Government may consider necessary for the purpose and such training shall be completed to the satisfaction of the Government.

[F. No.-42/5/2016-R&R]

JYOTI ARORA, Jt. Secy.

कोयला मंत्रालय**आदेश**

नई दिल्ली, 26 जुलाई, 2016

का.आ. 1498.— कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्याक का.आ. 1261(अ), 29 मार्च, 2016, जो भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), 30 मार्च, 2016 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में, या उस पर के सभी अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यांतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार का यह समाधान हो गया है कि महानदी कोलफील्ड्स लिमिटेड, जागृति विहार, बुर्ला, जिला सम्बलपुर, ओडिशा (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए तैयार है ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि और उस पर के सभी अधिकार, तारीख 30 मार्च, 2016 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्;

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी ;
2. सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा गठन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील

आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इस प्रकार सरकारी कंपनी द्वारा वहन किए जाएंगे ;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध कार्यवाहियों के संबंध में आवश्यक हो ;
4. सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और भूमि में या उसके ऊपर इस प्रकार निहित अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और
5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं, पालन करेगी ।

[फा.सं. 43015/9/2013-पीआरआईडब्ल्यू-1]

सुजीत कुमार, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 26th July, 2016

S.O. 1498.— Whereas on the publication of the notification of the Government of India in the Ministry of coal, number S.O. 1261(E), dated 29th March, 2016 published in the Gazette of India, Part II Section 3, Sub-section (ii), dated the 30th March, 2016 issued under Sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Mahanadi Coalfields Limited, Jagriti Vihar, Burla, District Sambalpur, Odisha (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs, that the said lands and rights in or over the said lands so vested shall with effect from dated the 30th March, 2016 instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:-

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. A Tribunal shall be constituted under section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights, in or over the said lands, so vesting, shall also be borne by the Government Company;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said land so vested;
4. The Government Company shall have no power to transfer the said lands to any other persons without the prior approval of the Central Government ; and
5. The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[F. No. 43015/9/2013-PRIW-I]

SUJEET KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 25/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/6/2009-आईआर (एम)]

समीर कुमार दास, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th July, 2016

S.O. 1499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2009) of the Central Government Industrial Tribunal/Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-30012/6/2009-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer**REFERENCE NO. 25 OF 2009****PARTIES:** The management of Territory Office and LPG Plant, BPCL, Durgapur.**Vs.**

Shri Joy Gopal Dey & 2 others

REPRESENTATIVES:

For the management : Sri Sunith Kumar Roy, Dy. Mgr. (LPG)

For the union (Workman) : Sri. Joy Gopal Dey

Industry: Petroleum

State : West Bengal

Dated: 13.06.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-30012/6/2009-IR(M) dated 08.09.2009 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of Bharat Petroleum Corporation Ltd., Territory Office & LPG Plant, Rajbandh Chatty, Durgapur in deducting one day wages of Shri Joy Gopal Dey, EDP No. 44328, Sri Dhiren Ch. Shaw, EDP No. 44337 & Sri D. Paul EDP No. 44325 and not allowing them CL on 20.04.2007 is legal and justified? What relief the workmen are entitled to? ”

1. Having received the Order No. L-30012/6/2009 – IR(M) dated 08.09.2009 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 25 of 2009 was registered on 05.10.2009 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Both parties are absent.

3. On perusal of case record I find that neither the workmen nor their representatives appearing before the court since 25.01.2012. So far 16 dates have been granted to them. Registered notices were also issued on 04.06.2012 and 16.10.2014 but all in vain. Several opportunities have so far been granted but the union neither appearing nor taking any step. It seems that the union is now not at all interested to proceed with the case further. As such the case is closed and a 'No Dispute Award' is hereby passed accordingly.

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. एल. पांडेय, कॉन्ट्रक्टर ऑफ जिलिंग लॉंगलोटा आयरन एण्ड मैंगनीज माइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 35/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-26012/3/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. N.L. Pandey, Contractor of Jiling Longalota Iron and Manganese Mines and their workman, which was received by the Central Government on 12.07.2016.

[No. L-26012/3/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 35/2014

No. L-26012/3/2014-IR(M), dated 05.06.2014

Date of Passing Order – 01st June, 2016

Between:

M/s. N.L. Pandey,
Contractor of Hiling Longalota Iron &
Manganese Mines, At./Po. Jhiling,
Dist. Keonjhar.

...1st Party Management

AND

Shri Sushil Munda,
Vill. Jalahari, Po. Jajang,
Dist. Keonjhar.

The General Secretary,
Shramik Suraksha Sangha,
At./Po. Sarai, Via. Champua,
Dist. Keonjhar.

...2nd Party-Workman/Union

Appearances:

None ... For the 1st Party-Management

None ... For the 2nd Party-Workman/Union

ORDER

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. N.L. Pandey, Contractor of Jhiling Longalota Iron & Manganese Mines and their workman Shri Sushil Munda in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-26012/3/2014 – IR(M), dated 05.06.2014 to this Tribunal for adjudication.

2. That the 2nd Party-workman has filed his statement of claim on 27.10.2014. He has not filed any documents to substantiate his case. Since he did not take any step except filing of his statement of claim the 2nd Party-workman was noticed on 07.04.2016 after the new P.O. Joins. Notice issued to him seems to have been duly served. But, neither the General Secretary of the 2nd party-Union nor the workman did appear and take steps.

3. On the other hand, the 1st Party-Management did not file its written statement, though the 2nd Party-workman has served a copy of the statement of claim on them through post. Also, notice was issued to the 1st Party-Management to file its written statement on 07.04.2016 from this Tribunal, but, neither the 1st Party-Management appeared nor any step is taken by it.

4. It appears from the above acts of the parties that either they have lost their interest in the case or they might have resolved their disputes amicably out of the court. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

5. The reference is answered in the above terms.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स यूआरएस इंजीनियरिंग कॉन्ट्रैक्टर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ सं. 54/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/29/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2015) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. URS Engineering Contractor and their workman, which was received by the Central Government on 12.07.2016.

[No. L-30012/29/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No.54/2015

Registered on 18.01.2016

Sh. Amit Kumar, S/o Sh. Prem Singh, Vill-Mohiudinpur Thirana,
Teh. & P.O.-Mathloda, Distt. Panipat (Haryana)

...Petitioner

Versus

M/s. URS Engineering Contractors, H.No.339-L, Model Town,
Near Shivaji Stadium, Panipat (Haryana)-132103

...Respondent

APPEARANCES :

For the workman : Workman ex parte

For the Management : Management ex parte

AWARD

Passed on : 31.05.2016

Vide Order No.L-30012/29/2015-IR(M), dated 02.12.2015 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. URS Engineering Contractor, Panipat(Haryana) in terminating the services of the workman Sh. Amit Kumar S/o Sh. Prem Singh is legal and justified? If not, what relief is entitled to and from which date?”

Notice was given to the workman as well as to the management through registered cover, duly posted on 3.2.2016. ADs’ not received within 30 days and it was declared that notices were served on the parties. None came present for the workman or the management and therefore, both the parties were proceeded against ex parte.

Since the workman was proceeded against ex parte, no statement of claim was filed to plead that the termination of the services of the workman were not legal and justified.

In the absence of any pleading or evidence thereon, the present reference is decided against the workman holding that he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अंबुजा सीमेंट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ सं. 25/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29012/15/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2015) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Ambuja Cement Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29012/15/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No.25/2015

Registered on 24.06.2015

Sh. Vikram Singh, S/o Sh. Sant Ram, R/o Vill-New Chakkar,
P.O.-Kashlog, Tehsil-Arki, Distt.Solan(HP).

...Petitioner

Versus

The General Manager(Personnel)Ambuja Cement Ltd., Unit Suli,
Tehsil-Darlaghat, Distt.-Solan(HP).

...Respondent

APPEARANCES :

For the workman : Workman ex parte

For the Management : Sh. Pawan Kumar Mutneja

AWARD

Passed on:-17.05.2016

Vide Order No.L-29012/15/2015-IR(M), dated 01.06.2015 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Ambuja Cement Limited in terminating the services of Sh. Vikram Singh S/o Sh. Sant Ram w.e.f. 13.4.2014 is just, valid and legal? If not, to what relief the concerned workman is entitled to and from which date?”

In response to the notice, the notice was given to the workman through registered cover duly posted on 13.10.2015. AD not received within 30 days and it was declared that notice was served on the workman but he did not appear and was proceeded against ex parte vide order dated 08.12.2015.

Since the workman was proceeded against ex parte, no statement of claim was filed and the case of the workman is unknown. Since the workman did not plead anything challenging his termination orders and leading any evidence thereon, it cannot be said that the termination of his services is illegal and invalid and he is not entitled for any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रकाश कंस्ट्रक्शन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ सं. 17/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/9/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1503.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2015) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Prakash Construction and their workman, which was received by the Central Government on 12.07.2016.

[No. L-30012/9/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No.17/2015

Registered on 18.05.2015

Sh. Raju, S/o Sh. Dariya, Village Sithana Colony,
Post-Kabri, Distt. Panipat, Haryana.

...Petitioner

Versus

M/s. Prakash Construction, House No.1069-P,
Sector-13-17, HUDA, Panipat, Haryana.

...Respondent

APPEARANCES :

For the workman : Workman ex parte

For the Management : Management ex parte

AWARD

Passed on:-10.05.2016

Vide Order No.L-30012/9/2015-IR(M), dated 27.04.2015 the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s Prakash Construction in terminating the services of Sh. Raju S/o Sh. Dariya Ram w.e.f. 20.03.2014 is justified? If not, what relief the workman is entitled to and from which date?”

On receipt of the reference, notice was given to the workman through registered cover but he refused to take its service. He did not appear and was proceeded against ex parte vide order dated 4.11.2015.

The management was also proceeded against ex parte vide said order dated 4.11.2015.

Since the workman has failed to put in appearance and file statement of claim to show how the termination of his services is illegal, and he is entitled to any relief, and therefore, the reference is answered against the workman, and it is held that he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कॉर्पोरेशन लिमिटेड और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ सं. 220/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/22/2010-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 220/2011) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. And others and their workman, which was received by the Central Government on 12.07.2016.

[No. L-30012/22/2010-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No.220/2011

Registered on 12.10.2011

Sh. Sunil Kumar Jha, S/o Sh. S.N. Jha,
resident of H.No.125/14, Old Sabzi Mandi Sanoli Road, Panipat.

...Petitioner

1. Indian Oil Corporation Ltd.(Through its Deputy General Manager)
Marketing Division, Panipat, Haryana.
2. M/s. Shiv Trading Co.(Through its Managing Director) C/o
Indian Oil Corporation Ltd., Marketing Division, Panipat, Haryana.
3. M/s. Hindustan Fabricators (through its Managing Director)
C/o Indian Oil Corporation Ltd., Marketing Division, Panipat, Haryana. ...Respondents

For the workman : Sh. Arun Batra, Adv.
For the Management : Sh. Paul S. Saini for Resp. No.1
Sh. Parminder Singh for Resp. No.2&3

Passed on:- 13.06.2016

“Whether the contract awarded by IOCL, Panipat is a sham contract and contractor M/s. Shiv Trading Co. & Hindustan Fabricators are a camouflage? Whether the demand of workman Sh. Sunil Kumar Jha S/o Sh. S.N. Jha, Ex. Grade-III for reinstatement and regularization with the management of IOCL, Panipat w.e.f. 13.8.2007 is just, fair and legal? To what relief the workman is entitled to and from which date?”

In response to the notice, Sh. Sunil Kumar Jha appeared and submitted statement of claim, pleading that he was appointed by respondent No.1 as Grade-III in April 1999 on monthly salary of Rs.3,000/-. He was working on the post of Typist Clerk/White Collar. He was also assigned the task of collection of sale tax forms beside other office work. He made representations to respondent No.1 for the grant of regular pay-scale and his request was not agreed to. He filed Civil Writ Petition No.12800 of 2007, claiming pay-scale for Rs.5400-10,500. It is pleaded that his services were terminated by respondent No.1 on 13.8.2007 without serving any notice or paying him any retrenchment compensation. It is further pleaded that respondent No.1 had taken the stand in the writ petition that the workman was an employee of respondent No.2 and 3. Thus, his termination is in violation of Section 25-F and 25-G of the Act and therefore, he is entitled to be reinstated in service.

Respondent No.1 filed written statement, pleading that it has given Haulage contract for performing miscellaneous jobs such as gardening, housekeeping, loading and unloading, grass cutting, electrical maintenance etc. That it gave haulage contract to respondent No.3 vide contract dated 15.04.1999(Exb.M1) and on the expiry of the period of contract, the same was extended to 31.03.2001 vide letter dated 31.03.2000(Exb.M3). The contract was again extended on 31.03.2000. That respondent No.3 changed the name of the firm from M/s Hindustan Fabricators and Contractors to M/s Shiv Trading Company. On the request of the contractor, the corporation again extended the period of contract for one year till 31.03.2002 vide letter dated 02.05.2001(Exb.M4) in the name of Shiv Trading Company.

On the expiry of the said contract, a fresh haulage contract was awarded to respondent No.2 for the period from 1.4.2002 to 31.3.2003 for a term of two years vide letter dated 30.3.2002(M-5). The contract was again extended for one year vide letter dated 1.4.2003(Exb.M6), further extended vide letter dated 1.4.2005(Exb.M8). A fresh haulage contract was awarded in favour of respondent No.2 for a period of two years till 30.9.2007 vide letter dated 1.10.2005. Payment is made to the contractors as per the bills submitted by them for the work performed and the corporation has no concern with the workers employed by the contractor.

It is further pleaded that the workman is not an employee of the corporation who have its rules and regulations for giving appointments and he may be the man of the contractor. That the contract was given for performing a particular job. It is for the contractor to engage the persons for the work given in the contract and the corporation has no concern with the workman.

Respondent No. 2 and 3 filed their separate written statement taking the same stand as taken by the respondent No.1 and further pleaded that the workman was engaged by respondent No.2 and 3 and he suddenly stopped coming to the duty and as such, voluntarily abandoned the services.

Parties were given opportunity to lead evidence.

In support of his case, the workman Sh. Sunil Kumar Jha appeared in the witness-box and filed his affidavit reiterating the stand taken by him in the statement of claim. He also placed on record the documents Ex.W1 to Ex.W9.

On the other hand, respondent No.1 has examined Sh. Sanjay Kumar, who filed his affidavit along with documents Ex.M1 to M11, reiterating the stand of respondent No.1.

Sh. Ramphal has appeared on behalf of Resp. No.2 and 3 being its Managing Director and stated that the workman was working with him and used to work in the office of IOCL on his behalf.

I have heard Sh. Arun Batra for the workman, Sh. Paul S. Saini for respondent No.1 and Sh. Parminder Singh for respondent No.2 and 3 and perused the file carefully.

It was argued by Sh. Arun Batra that the workman is an employee of the respondent No.1 and he did not received any salary from respondent No. 2 and 3 and the contract awarded to them is a sham transaction. The workman was an employee of respondent No.1 as is clear from the documents Ex.W1 to W9 placed on file.

I have considered the contention of the learned counsel.

So far as the documents Ex.W1 to W9 are concerned, the same do not establish that the workman was ever appointed by the corporation. Ex.W1, W2, W3 are simply challan forms and do not advance the case of the workman in any way and name of the workman do not find mention therein anywhere.

Similarly a letter Ex.W4 which is written to the Senior Divisional Manager again do not show that the workman was an employee of the corporation. A letter Ex.W5 which has been written by Sub Divisional Engineer to the Branch Manager of respondent mentioning that their representative Mr. Jha Collected VAT C-3 and similarly his name find mention in letter Ex.W7 regarding the return of bills and Mr. Sunil Jha was authorized to receive ST-38 form by the Assistant Manager vide letter dated 21.8.2003(Exb.W8). If the workman has collected certain forms or was authorized to collect the same, the same do not show that he was an employee of the corporation.

Sh. Ramphal, contractor has specifically stated that the workman was working for him in the office of IOCL, and if the workman performed certain duties while working as a man of contractor, the same do not ipso facto show that he was an employee of the corporation.

The workman has himself stated that there no advertisement was given for Grade-III employee and his name was not sponsored by the employment exchange. He even stated that he did not move any written application for seeking appointment nor any appointment letter was given to him. That respondent No.1 did not issue him any ID card and nor enrolled him for P.F. That the corporation did not issue any pay slip to him for disbursing the salary. It was for the workman to prove by leading cogent evidence that he used to receive payment from the corporation which he failed. He did not move any application for seeking employment in the corporation and no appointment letter was issued to him. In these circumstances, it cannot be said that there was any relationship of employer and employee between the workman and respondent No.1.

My attention is also drawn towards certificate Ex.P9 which was issued by someone for Deputy General Manager that Sh. Sunil Kumar Jha was working in the Plant since May 1999. If he has been working in the plant as mentioned in the said certificate, it cannot be held that he was appointed by respondent No.1 in the circumstances discussed above.

Respondent No.2 and 3 are owned by Sh. Ramphal who appeared in the witness-box, and has specifically admitted that Sunil Kumar Jha was his employee and also stated so in his written statement.

It is the case of the workman that he continuously worked from April 1999 to 13.8.2007 which is not denied by respondent No.2 and 3. Thus he has completed 240 days of service in a calendar year prior to the termination of his service. Sh. Ramphal has taken the plea that it was the workman who abandoned the service, which cannot be believed on its face value and if the workman did not come present for the job, the contractor was required to issue a notice to him to come and join the duty but no such step was taken and his bare statement that the workman abandoned the job, cannot be believed.

It is not the case of the respondent No.2 and 3 who are actually owned by Sh. Ramphal witness that any notice was served on the workman for termination of his service.

Since the workman worked continuously for a long period, he was required to be served with a notice or payment of retrenchment compensation as required under Section 25-F of the Act. Since he was removed from service without payment of any retrenchment compensation or service of notice, the termination of his services by respondent No.3 is illegal and invalid.

Now the question is whether he is to be reinstated in service. The workman was working with the contractor and in the circumstances, his reinstatement in service cannot be ordered. He is entitled to compensation for illegal termination of his services by respondent No.2. The workman has worked for more than 8 years and drawing a salary of Rs.3,000/- per month as pleaded by him.

Considering the entire circumstances, the workman is held entitled to a compensation of Rs.2.50 lac which he is entitled to receive from the respondents jointly and severally.

Though the reference was whether the contract awarded by IOCL is a sham contract and the contractor M/s Shiv Trading Company and Hindustan Fabricators are a camouflage. Though an argument was raised to show that the contract is a sham contract but nothing has been pleaded that of contract entered into by respondent No.1 with respondent Nos. 2 and 3 from time to time are a camouflage and a sham transaction. Therefore in the absence of any pleading or evidence thereof, it cannot be said that the agreement executed by respondent No.1 awarding contract to respondent No.2 and 3 for haulage is illegal or a sham transaction.

In result, the reference is answered holding that the contracts awarded by the IOCL to respondent No.2 and 3 from time to time are not a sham transaction and the workman is not entitled to reinstatement and regularization of service with respondent No.1; and he is entitled to get a compensation of Rs.2.50 lac from the respondents jointly and severally as it is the admitted case that respondent No.1 is the principal employer. If respondent No.1 pay the amount, it is at liberty to recover the same from respondent No.2 and 3. The respondents are further directed to pay the amount within 3 months of the publication of the award failing which the claimant shall be entitled to recover the interest @ 6% per annum on the awarded amount from the date of award till realization.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. पी. स्टेट माइनिंग कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 186/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29012/50/1992-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 186/1993) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29012/50/1992-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/186/93

General secretary,
MP Khadan Swatantra Mazdoor Sangathan,
Baradwar, Post Baradwar,
Distt. Bilaspur

...Workman/Union

Versus

Dy.General Manager (M),
MP state Mining Corporation Ltd.
Sub office Baradwar,
Post Baradwar,
Distt. Bilaspur.

...Management

AWARD

Passed on this 7th day of June 2016

1. As per letter dated 6-9-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-29012/50/92-IR(Misc) The dispute under reference relates to:

“Is the management of MP. State Mining Corporation Ltd. justified in placing Shri Fekulal Gupta Office Assistant (skilled category) in the scale of pay of Rs.725-900 while allowing helpers (semi skilled) to draw a scale of pay of Rs.800-1200? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim through General Secretary of Union. Case of Ist party is that Ist party workman was appointed on the post of Assistant on 10-4-84 in pay scale 485-10-575-740. Since his appointment, he was working on the post of Assistant. After six months of his appointment, his pay was reduced to Rs.380/- illegally. The pay of the employees of State Mining Corporation was revised. Workman was not given benefit of revised pay scale. In the year 1989, pay scales of employees were revised. The pay scale of Assistant was Rs.800-15-1150-25-1200. However the pay of Ist party was fixed at Rs.725/-. Ist party submits that his pay should have been fixed Rs.800/-. That since date of his appointment, he is entitled to revise pay of the post of Assistant. That he suffered loss of Rs.30,000 as he was not given benefit of revised pay.

3. After appearing, 2nd party submitted application for deleting name of MP. State Mining Corporation on the ground that MP. State Mining Corporation was bifurcated. However Written Statement in the matter is not filed either by MP. State Mining Corporation or by CG Mining Corporation.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the management of MP State Mining Corporation Ltd. justified in placing Shri Fekulal Gupta Office Assistant (skilled category) in the scale of pay of Rs.725-900 while allowing helpers (semi skilled) to draw a scale of pay of Rs.800-1200?	Parties failed to participate in reference. Dispute could not be decided on merit.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. As stated above, Ist party workman filed statement of claim through Union. 2nd party Mining Corporation not filed Written Statement. Workman failed to adduce evidence. Evidence of workman is closed on 9-12-15. Management also failed to adduce evidence. Both parties not participated in reference proceeding, no evidence is adduced by workman therefore the dispute could not be decided on merit.

6. In the result, award is passed as under:-

- (1) The dispute under reference could not be decided on merit as parties failed to participate.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. पी. स्टेट माइनिंग कार्पोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 132/1995) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29012/131/1994-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/1995) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. MP. State Mining Corporation Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29012/131/1994-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/132/95

General Secretary,
Madhya Pradesh Khadan swatantra Mazdoor Sanghathan,
Baraduar,
Distt. Bilaspur

...Workman/Union

Versus

Managing Director,
MP State Mining Corporation Ltd.,
Head Office- E/5/14, Arera Colony,
Ravi Shankar Nagar,
Bhopal.

...Management

AWARD

Passed on this 8th day of June, 2016

1. As per letter dated 2-7-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29012/131/94-IR(Misc).The dispute under reference relates to:

“Whether management of MP State Mining Corporation Ltd., Bhopal appointed Shri Nand Kumar Pandey as Junior Supervisor in sand Mines , Bhilai Khurd- Korba ? 2. Whether management of MP. State Mining Ltd in terminating the services of Shri Nand Kumar Pandey is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through Union at Page 3/1 to 3/2. Case of Ist party is from 20-4-85, he was working as junior supervisor in office of State Mining Corporation at Korba. His services were terminated without notice from 20-7-85. No enquiry was conducted against him, he was not given opportunity for his defence. Ist party workman Nand Kumar Pandey was doing the work of issuing receipts book from 424, 3920, 3921, 3947, 3948. Said record is available in the office of Corporation. the circular issued by Shri B.N. Tiwari Transport contractor and RDC Transport contractor are submitted along with statement of claim. Ist party further submits that junior employees are continued to work. On such ground Union submits that workman is entitled for reinstatement with continuity of service.

3. 2nd party appeared in the proceeding and filed application for setting aside ex parte order dated 28-9-05. Thereafter case was fixed for filing Written Statement on various dates from 10-5-07 to 5-9-13. Management not filed Written statement and as such proceeded ex parte.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether management of MP State Mining Corporation Ltd., Bhopal appointed Shri Nand Kumar Pandey as Junior Supervisor in sand Mines , Bhilai Khurd- Korba ?	Parties not participated in reference proceeding, dispute could not be decided on merit.
(ii) Whether management of MP State Mining Ltd. in terminating the services of Shri Nand Kumar Pandey is justified?	Parties not participated in reference proceeding, dispute could not be decided on merit.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Ist party Union has filed statement of claim. Thereafter failed to participate in reference proceeding. Though the case was fixed for evidence on various dates, Ist party did not adduce evidence. Evidence of Ist party was closed on 10-12-05. 2nd party also failed to adduce evidence. Evidence of 2nd was closed on 26-5-2016. As both parties failed to participate in reference, the dispute could not be decided on merit. Accordingly I record my finding in Point No.1.

6. In the result, award is passed as under:-

- (1) The reference could not be decided as both parties failed to participate in reference.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. पी. स्टेट माइनिंग कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 51/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29011/21/1997-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/1998) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29011/21/1997-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/51/98

General Secretary,
MP Khadan Swatantra Mazdoor Sangathan,
Baraduar, Distt. Bilaspur (MP)

...Workman/Union

Versus

Managing Director,
MP State Mining Corporation Ltd.,
Paryavas Bhawan, Block No.1,
2nd Floor (A), Jail Road, Arera Hills,
Bhopal (MP)

...Management

AWARD

Passed on this 8th day of June, 2016

1. As per letter dated 3-3-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No .L-29011/21/97/IR(M). The dispute under reference relates to:

“Whether the action of the management of MP.State Mining Corporation in not paying the wages to workers working in mines at par with the regular employees of the Corporation is justified? If not, to what relief the workmen are entitled for? (2) Whether the action of the management of MP. State Mining Corporation in terminating the workers (as per annexure enclosed by union) working in Mines is justified? If not, to what relief the workmen are entitled for? (3) Whether the action of the management of MP. state Mining Corporation in not enhancing the piece rated wages to the workers working in miens w.e.f. 1-4-93 is justified? If not, to what relief the workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Union filed statement of claim at Page 7/1 to 7/2. Case of Union is that MP. State Mining Corporation was operating raw phosphate mines at Meghnagar, Heerapur Rock Phosphate Mine, Satna Bauxite Khadan and Baraduar Dolomite Mine etc., Standing orders of MP. State Mining Corporation are applicable to employees working in all those mines as per Section 17 of standing orders Act 1946. The notification dated 12-9-80 issued by Government of India, Ministry of Labour prescribing minimum wages for skilled, unskilled clerical categories of workman. The rates of wages prescribed by Government should be applied without making any kind of designation. However the wages for daily wage employees are discriminatory that the clerk, supervisor, helper, dealer are prescribed 2 ½ times wages, 15 days leave, 13 days CL, Medical leave-10 days, HRA -2 ½ times, LTC in 3 years are allowed. That all workers engaged on daily wages in the mine are entitled to similar benefits with arrears. The State Mining Corporation make a limited Meghnagar raw mine terminated 44 employees in 1995 without conducting enquiry, no permission of Government are shown in para-6 of the Statement of Claim. Union prays that all piece rated labours be allowed arrear, that 44 employees terminated by corporation be reinstated.

3. 2nd party filed application for deleting name of 2nd party MP. State Mining corporation. However no Written Statement was filed in the matter though the case was repeatedly adjourned. 2nd party management was proceeded ex parte on 5-9-13.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of MP. State Mining Corporation in not paying the wages to workers working in mines at par with the regular employees of the Corporation is justified?	Parties not participated in reference, dispute could not decided on merit.
(ii) Whether the action of the management of MP. State Mining Corporation in terminating the workers (as per annexure enclosed by union) working in Mines is justified?	Parties not participated in reference, dispute could not decided on merit.
(iii) Whether the action of the management of MP. state Mining Corporation in not enhancing the piece rated wages to the workers working in miens w.e.f. 1-4-93 is justified?	Parties not participated in reference, dispute could not decided on merit.
(iv) If not, what relief the workman is entitled to?”	Workmen is not entitled to any relief.

REASONS

5. The dispute under reference pertains to non-payment of wages working at mine at par with regular employees terminating services of 44 employees shown in annexure and not enhancing piece rated wages from 1-4-93. After notice, though 2nd party MP. State Mining through Advocate Shri R.C.Shrivastava, Sajid and M.P.Kapoor appeared but Written Statement is not filed. Application for deleting name of 2nd party No.1 was filed. As Written Statement is not filed on behalf of 2nd party, it was proceeded ex parte. Union has also not participated in reference proceeding. No evidence is adduced in support of his claim. 2nd party also not participated, therefore could not be decided on merit. Accordingly I record my finding in Point No.1, 2 & 3.

6. In the result, award is passed as under:-

- (1) As parties failed to participate in reference proceeding, reference could not be decided on merit.
- (2) Workers are not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1508.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. पी. स्टेट माइनिंग कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 175/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29011/47/1998-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 175/1999) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29011/47/1998-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/175/99

Shri Beniram Sahu, Secretary,
Madhya Pradesh Khadan Swatantra Mazdoor Union,
Village & PO Sakti,
Distt. Janjgir Champa

...Workman/Union

Versus

Managing Director,
MP State Mining Corporation Ltd.,
Paryavas Bhawan, Block No.1, 2nd Floor,
Jail Road, Arera House,
Bhopal (MP)

...Management

AWARD

Passed on this 8th day of June 2016

1. As per letter dated 22-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29011/47/98/IR(M). The dispute under reference relates to:

“Whether the action of the management of Dumarapara Dolomite Mines of M/S Madhya Pradesh State Mining Corporation Ltd., Distt. Janjgir Champa in closing their mines w.e.f. 15-2-97 is justified? If not, to what relief the workman employed in the said mines are entitled?

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 10/1 to 10/2. Case of Ist party Union is 484 workmen connected with the dispute were working in Duman Pala Dolomite Mines since 1976. Said mine was closed on 15-2-97 without paying retrenchment compensation to the workers. Consequently 484 workers were rendered unemployed. The management of 2nd party had issued notice of retrenchment of workers in Duman Pala Dolomite Mines on 26-11-96. Management had issued letter dated 6-1-97 to Government of India, Ministry of Labour regarding payment of retrenchment compensation. The meeting of management and Union was called at Delhi on 29-1-97. The Government had not granted permission for retrenchment and closure of mine as per letter dated 20-2-97. The mine was illegally closed on 15-2-97. Management had given land of mine on lease to private agency. The higher officers of State Mining Corporation had actively approved the closure of mine. Principal Secretary of Mining had approved lease of mine. On such ground, Union prays for reinstatement of all workers in the mine with continuity of service. On behalf of 2nd party management, application for setting aside exparte order dated 28-9-05 appears to have been filed. The application was also filed by Advocate R.C.Shrivastava on 25-7-05 for deleting name of MP State Mining Corporation. However Written Statement was not filed in the matter. Dispute raised was repeatedly fixed for filing Written Statement since 24-8-2010.

3. Management of 2nd party was proceeded exparte on 5-9-2013.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Dumarapara Dolomite Mines of M/s. Madhya Pradesh State Mining Corporation Ltd., Distt. Janjgir Champa in closing their mines w.e.f. 15-2-97 is justified?	As parties failed to participate in reference proceeding, the dispute could not be decided on merit.
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

5. After Union filed statement of claim, Union has failed to participate in reference proceeding. Management has filed application for setting aside exparte order and application for deleting name of 2nd party but did not participate in reference. Union failed to adduce evidence. Evidence of Union was closed on 11-2-2015. Union was issued notice on 22-12-2015 but Union failed to adduce evidence. Management also failed to adduce evidence. Evidence of management was closed. As both parties failed to participate in reference proceeding, dispute under reference could not be decided on merit. Accordingly I record my finding in Point No.1.

6. In the result, award is passed as under:-

- (1) The reference could not be decided as both parties failed to participate in reference.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्डाल्को इंडस्ट्रीज लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 133/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29012/18/2000-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindalco Industries Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29012/18/2000-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/133/00

Shri Sharda Prasad Tiwari,
S/o Shri Radhika Prasad Tiwari,
Vill. Raigaon, PO Dhunwara,
Satna (MP)

...Workman

Versus

Hindalco Industries Limited,
PO Renkoor,
Distt. Sonbhadra, UP

...Management

AWARD

Passed on this 22nd day of June 2016

1. As per letter dated 10-7-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29012/18/2000/IR(M). The dispute under reference relates to:

“Whether the action of the management of Raw Materials Division of Hindalco Industries Ltd. Situated at Katni/ Satna in terminating the services of Shri Sharda Prasad Tiwari w.e.f. February 1996 after engaging him continuously from August 1985 is justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 8/1 to 8/3. Case of Ist party workman is in August 1985, he was appointed as Supervisor. His duty was to check quality of Bauxite at the siding and submit daily report to the office of the company at Katni. That he was continuously working till March 96. His services were terminated without notice. 2nd party No. 2 was in administrative control of 2nd party No.1. salary of workman was paid by 2nd party No.2. Ist party workman reiterated that he was continuously working from August 85 to March 96. He was checking quality of bauxite and used to submit daily report to the office of the company at Katni. He did not received any showcause notice during entire service period. His performance was excellent. After termination of his service without notice in March 96, proceeding was filed at Labour Court, Satna. Management has admitted in his reply about termination of its employee in March 96. The order of termination was not served on him. Ist party workman was orally given understanding that as work was not available, his services were terminated violating provisions of ID Act, he was not paid retrenchment compensation, termination notice was not issued to him. One month salary in lieu of notice was not paid. Policy of last come first go was not followed. Termination is illegal. On such ground, workman prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 11/1 to 11/3 opposing claim of workman. 2nd party denied all material contentions of workman. 2nd party submits that it is engaged in production of primary aluminium metal. For its production, raw material is received from its captive mines located at different states. That due to scarcity of abandoned bauxite, sometimes bauxite was purchased from outside contractors. Accumulated bauxite was loaded at Railway siding once or twice in a month subject to availability. Such loading was carried by casual labour occasionally. Work was irregular, intermittent nature. Regular work should not be maintained. Workman was occasionally engaged on casual basis carried out job for few days in a month. Workman was not employed on permanent basis. He did not work continuously. Workman never worked for 240 days preceding 12 months claimed by him.

4. 2nd party further submits that work of checking quality is highly technical job by technically qualified persons. That unskilled workman like Ist party can never perform such job. The material purchase was excessively transported from mining side to the siding by individual contractor at his sole responsibility. That no employee was engaged or has been engaged for casual work as there was no such work carried out. Workman could not be employed on regular basis unless the work of regular nature was available. On such contentions, 2nd party submits that provisions of ID Act are not applicable as workman did not work for 240 days. Claim of workman is not tenable.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Raw Materials Division of Hindalco Industries Ltd. Situated at Katni/ Satna in terminating the services of Shri Sharda Prasad Tiwari w.e.f. February 1996 after engaging him continuously from August 1985 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. The term of reference pertains to legality of termination of services of workman. Ist party filed affidavit of his evidence. Workman has stated that he was appointed as supervisor from August 1985. He was checking quality of bauxite and used to prepare daily report. 2nd party No.2 used to pay monthly salary to him. He referred salary till March 95. His services were orally terminated in March 96. Other employees employed after him were retained in service. policy of last come first go was not followed. He rendered service more than 240 days in 12 months prior to his

retrenchment from service. In his cross-examination, workman says he studied upto 8th standard. He cannot read English. He was supervising raw materials, he was taking samples. He confirm that in statement of claim that he was taking samples of raw materials is true. That he has not received education for testing the metal. That he worked with the management from August 85 to March 96. Any document is not produced by him about his working or payment of salary. He was unable to tell how much metal was purchased during the year. Prior to 1985, he was doing the work in Agriculture. His date of birth is 1-1-58. Workman was unable to tell date without his affidavit of evidence was prepared. He confirmed contents of para 8 of his affidavit as true. In para-8 of his affidavit, workman has stated that he is not gainfully employed.

7. Witness No.2 Dr. Pramod chandra Sharma in his evidence says during 1987 to 1996, he was working in Hindalco as Raw Material Manager. Workman was working as Siding Supervisor. During said period, workman was not paid retrenchment compensation. He was not served with notice of termination. Work of Hindalco company was continuously carried. Performance of workman was satisfactory. In his cross examination Dr. P.C.Sharma says his appointment letter is not produced. Appointment letter of workman is not produced. All documents are at headquarter of 2nd party. The witness did not remember educational qualification of workman. For post of supervisor, educational qualification is passing 8th, 10th standard is required. Ist party workman was doing work of unloading bauxite from truck looking after the shortage, the trucks were regularly coming to the siding Dr. P.C.Sharma has corroborated the evidence of workman.

8. Evidence of management's witness Shri S.K.Brahmachari on affidavit supported contentions of management that workman was never engaged, workman was not continuously working for 240 days. Bauxite Metal was purchased from contractors. Contractor was responsible for its quality. Work was carried for 7-8 days in a month. Management's witness in his cross-examination denies that workman was checking quality of bauxite received from other sources other than captive mines. That he had not seen record of bauxite loading and unloading. He filed affidavit of his evidence as per the available record. He claims ignorance about the contractors engaged by 2nd party. He denies that salary of workman was paid by 2nd party. He denies that workman had worked for more than 240 days. Workman was not paid compensation, notice of termination was not issued to him.

9. If evidence of workman and management's witness is considered carefully, evidence of workman is corroborated from evidence of Dr. P.C. Sharma. that workman was continuously working during his tenure 1987 to 1996. I donot find reason to disbelieve his evidence. Workman has established that he was working more than 240 days preceding 12 months of termination of his service. workman was not paid retrenchment compensation. Termination notice was not served on him. Management's witness has not produced documents about working days, therefore I hold that termination of services of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No. 2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration is whether workman is entitled for reinstatement with backwages. The evidence of Ist party workman is clear that he was engaged on casual basis. Reinstatement of workman with backwages would not be appropriate. Considering the period of working of workman, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

11 In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs.One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दाल्को इंडस्ट्रीज लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 138/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29012/13/2000-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/2000) of the Central Government Industrial Tribunal/Labour

Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindalco Industries Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29012/13/2000-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/138/00

Shri Nandilal Yadav,
S/o Shri Budhulal Yadav,
Vill Karhivakalan No.2,
Post Gulwara, Tehsil Katni,
Katni (MP)

...Workman

Versus

Hindalco Industries Limited,
PO Renkoor,
Distt. Sonbhadra, UP

...Management

AWARD

Passed on this 22nd day of June 2016

1. As per letter dated 12-7-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29012/13/2000/IR(M). The dispute under reference relates to:

“Whether the action of the management of Raw Materials Division of Hindalco Industries Ltd. Situated at Renukoot, Katni in terminating the services of Shri Nandilal Yadav S/o Shri Budhulal Yadav w.e.f. July 1990 after engaging him continuously from February 1996 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 8/1 to 8/3. Case of Ist party is that he was appointed as Driver in 1990 by 2nd party. He was continuously working till termination of his services in March 96. His services were terminated without notice. 2nd party was Controlling Authority. Workman further submits that from August 1985 to 1996, he was continuously working. His services were terminated without notice. Chargesheet was issued to him. That he holds the required qualification for his work. He was continuously working more than 240 days. After termination of his service without notice, 2nd party has engaged employees of contractor policy of first come last go was not followed. Intimation of closing work was not given to the authority. After termination of his service, he is unemployed.

3. 2nd party filed Written Statement at Page 11/1 to 11/3 opposing claim of workman 2nd party denied all material contentions of Ist party. It is submitted that 2nd party No.1 is registered under Company's Act engaged in production of Aluminium Metal using bauxite. Due to scarcity of bauxite, said metal was purchased from contractor. The metal bauxite used to be accumulated at Railway sidings once in a month subject to availability. Workman was occasionally engaged on casual basis for intermittent nature of job. Ist party was not employed on permanent basis. He did not work for 240 days during any 12 months. Termination of workman in violation of Section 25-F is denied. That work of wagon loading was done 7-8 days in a month it is alleged workman is throwing arrows in dark for unknown gains. Workman has not worked for 240 days. He is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Whether the action of the management of Raw Materials Division of Hindalco Industries Ltd. Situated at Renukoot, Katni in terminating the services of Shri Nandilal Yadav S/o Shri Budhulal Yadav w.e.f. July 1990 after engaging him continuously from February 1996 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order

REASONS

5. Point No.1- The term of reference pertains to legality of termination of workman. Ist party filed affidavit of his evidence. Workman says that he was appointed as Driver from 1-7-90. He was continuously working till March 96. He was orally discharged from March 96 without any notice, compensation was not paid to him in lieu of notice. He was discharged without following principles of last come first go. He worked more than 240 days during 12 months preceding date of his retrenchment. In his cross, workman says he studied upto 8th standard. He cannot read English. He could not read his affidavit of evidence but it was read over to him by his Advocate. He was unable to tell contents of para 1 to 8 of his affidavit. He has not produced his driving licence but he was ready to produce his Driving Licence if required. He was appointed on 1-7-90. He did not remember whether appointment order is produced by him. Jeep No. MP 21-339 was given to him for driving by Dr.P.C.Sharma. prior to 1999, he was driving taxi. Presently he was doing work in agriculture. The place where he was engaged, bauxite work was carried. He was paid salary. He did not remember whether its documents are produced. He filed proceeding before Labour Court, Satna when said case was withdrawn. He was working with 2nd party till 1996. He was paid Rs.500 permonth. He denies that he never worked with 2nd party.

6. Witness Dr.P.C.Sharma in his evidence says during 1990 to 1996, he was working as Manager in Hindalco Industry. Workman was working as Driver during 1990 to 1996-97. He was continuously working. Workman was not paid retrenchment compensation. He was unable to tell after retrenchment of workman, who was engaged for said work. Documents about attendance, payment of wages, deduction of PF Etc. were maintained. Those documents are not available. In his cross, above witness says documents about his appointment as Manager are not produced. Documents pertaining to dispute are not produced. During 1990 to 1996, Hindalco company was engaged in bauxite Lime Mine. Work was of continuous nature. Witness denied that Hindalco was carrying its work for some period.

7. Evidence of management's witness Shri S.K.Brahmachari is in the nature of denial of claim of workman. Workman was not appointed, he was engaged for casual work. Workman did not work for 240 days. Workman was not served with showcause notice or chargesheet as he was engaged casually. In his cross-examination, management's witness says employees of B.K.Jha Company were checking bauxite received from other sources than the captive mines. Shri B.K.Jha was not doing the work of checking metals. Ist party workman was doing work of checking metals. Documents are not produced. He did not recollect name of contractor. He denied that work of checking bauxite was carried more than 240 days in a year. Witness denied suggestion that workman worked more than 240 days. If evidence of Ist party and his witness is carefully appreciated, evidence of Dr. Sharma is corroborated with evidence of workman that he was engaged as driver and continuously working from 1990 to 1996. Management's witness admits that workman was not paid retrenchment compensation. Notice was not issued to him. Evidence of workman is corroborated by Dr.P.C.Sharma that workman had completed more than 240 days. Service of workman are terminated without notice, retrenchment compensation is not paid. Termination of service of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 that termination of service of workman is illegal, question remains for decision is whether workman is entitled for reinstatement. Workman has not produced appointment letter therefore reinstatement of workman with backwages will not be appropriate. Considering the workman was working from July 1990 to March 96, compensation Rs.75,000/- would be appropriate. Accordingly I record my finding in Point No. 2.

9. In the result, award is passed as under:

(1) The action of the management is not proper and legal.

(2) 2nd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. पी. स्टेट माइनिंग कार्पोरेशन लिमिटेड और दूसरे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 33/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29011/66/2002-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. MP State Mining Corporation Ltd. And other and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29011/66/2002-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****No. CGIT/LC/R/33/03**

Shri Beni Ram Sahu, President,
Madhya Pradesh Khadan Swatantra Mazdoor Sangathan,
Vill Deragarh, PO Baradwar,
Distt. Janjgir,
Champa(CG)

... Workman/Union

Versus

Managing Director,
Madhya Pradesh State Mining Corporation,
Paryawas Bhavan, IInd floor,
Alera Hills, Jail Road,
Bhopal (MP)

Dy.General Manager(Mines),
Mainpat Bauxite Mines, Shivahar Colony,
Pratappur Naka,
PO Ambikapur
Sarguja (CG).

...Management

AWARDPassed on this 7th day of June 2016

1. As per letter dated 4-2-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29011/66/2002-IR(M). The dispute under reference relates to:

“(1) Whether the action of the management of Madhya Pradesh state Mining corporation, Bhopal(Owner of Mainpat Bauxite Mines) in terminating the services of 335 workers on the plea of absenteeism is justified? If not, to what relief the workers are entitled?” (2) whether the action of the management of Madhya Pradesh State Mining Corporation Ltd. Bhopal (Mine owners of Mainpat Bauxite Mines) in terminating the services of the following workers without issuing any chargesheet/ conducting enquiry/ obtaining permission for such type of retrenchment is justified? 1. Shri Man Kumar- Chowkidar, 2 Shri Chandrika Prasad- Chowkidar, 3. Shri Vijay Kumar Singh- Typist, 4. Shri Dhaniram Water Carrier, 5. Shri Devnath- water carrier, 6. Shri Tejram- Water carrier and 7. Shri Jeroram chowkidar. If not, to what relief the said workmen are entitled? (3) whether the action of the management of Madhya Pradesh State Mining Corporation Ltd. Bhopal (Owner of Mainpat Bauxite Mines) in not paying the compensation to the terminated/ retrenched employees is justified? If not, to what relief the affected worker are entitled?”(4) whether the action of the management of Madhya Pradesh State Mining Corporation Ltd., Bhopal (Mine owner of Mainpat Bauxite Mines) in not attending the conciliation proceedings from their end and shifting their responsibility to the new bifurcated concern-

Chhattisgarh Mineral Development Corporation Ltd. on 26-4-02 is justified? If not, to what type of strictures are to be passed against MPSMC?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 7/1 to 7/2., case of Union is that 335 workers connected with the dispute under reference were transferred from Baraduar Mine to Mainpat Bauxite Mine, Distt. Surguja in November 1995. That at Mainpat Bauxite mines, there were no proper facilities for residence, drinking water, medical facilities. The management illegally terminated services of 335 workers for absence from duties. Any chargesheet was not issued to workers , opportunity of hearing or defence was not given to them. The workers were not paid retrenchment compensation. Their services were terminated violating Section 25-F of ID Act as retrenchment compensation was not paid.

3. Union in Para 4 of the statement of claim has specifically pleaded that chargeman Mankumar, Chandrika Prasad- Chowkidar, Shri Vijay Kumar Singh- Typist, Shri Dhaniram Water Carrier Shri Devnath- water carrier, Shri Tejram- Water carrier and Shri Jeroram chowkidar were retrenched in 1995. Chargesheet was not issued to them. No enquiry was conducted against them. Retrenchment compensation was not paid, termination of their service is not legal. They are entitled to reinstatement with backwages. All 342 workers are entitled for reinstatement.

4. 2nd party despite of repeated notices failed to file Written Statement. Personal Manager has produced letters addressed to the Director of MP State Mining Corporation. The ordersheet shows that Advocate Shri R.C.Srivastava, M.P.Kapoor undertaken to submit vakalatnama but vakalatnama were not filed. Management was proceeded exparte on 5-9-2013.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Madhya Pradesh state Mining corporation, Bhopal(Owner of Mainpat Bauxite Mines) in terminating the services of 335 workers on the plea of absenteeism is justified?	As parties failed to participate in reference proceeding, dispute under reference could not be decided on merit.
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

6. The term of reference pertains to the legality of termination of 335 workers on the ground of absenteeism, issuing chargesheet, conducting enquiry, not paying retrenchment compensation and failure of 2nd party in attending conciliation proceeding and as to what kind of directions could be passed. In order of reference Item 4 pertains to failure to attend the conciliation proceedings from their end and shifting their responsibility to the new bifurcated concern- Chhattisgarh Mineral Development Corporation Ltd. on 26-4-02 is justified cannot be said matter pertaining to ID. Parties failed to participate in conciliation proceedings. The superior authorities of the concerned offices of the management can take appropriate action. So far as legality of termination of workman is concerned, on the ground of absence from duty without issuing chargesheet or conducting enquiry non-payment of retrenchment compensation. Ist party Union despite of repeated notices issued to it failed to participate in reference proceeding. Union has failed to adduce evidence in support of his claim. Though management was proceeded exparte, inadvertently case was fixed for evidence of management on certain dates. Management also failed to participate in the reference proceeding. The dispute under reference could not be decided on merit. Accordingly I record my finding in Point No.1 that workmen are not entitled to any relief.

7. In the result, award is passed as under:

- (1) The dispute under reference could not be decided on merit as parties failed to participate.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीमेंट कार्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 50/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-29011/61/2002-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2003) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Cement Corporation of India and their workman, which was received by the Central Government on 12.07.2016.

[No. L-29011/61/2002-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/50/2003**

Shri P.K.Soni, General Secretary,
Rashtriya Cement and Khadan Shramik Sangathan,
C/o Cement Corpn of India,
Champa(CG)

...Workman/Union

Versus

General Manager,
Cement Corporation of India,
Vill & PO Akaltara,
Distt. Janjgir,
Champa (CG).

...Management

AWARDPassed on this 13th day of May 2016

1. As per letter dated 7-2-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29011/61/2002/IR(M). The dispute under reference relates to:

“Whether the action of the management of Cement Corporation of India, Akaltara, Distt. Janjgir- Champa (CG) in reverting Shri Jeeth Singhy Kshathri from the post of Accountant to the post of Assistant Accountant is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 5/1 to 5/2. Case of workman is that he was appointed on post of Assistant Accountant on 15-7-76 at Akaltara. That the condition of transfer in appointment order was cancelled. Letter in that regard is relied. Workman submits violating the conditions of service, he was transferred as per order dated 21-6-89, workman challenged order of his transfer in WP No. 4366/89. Vide order dated 22-11-90, Hon'ble High court directed that on reversion, workman be posted at Akaltara. Workman was working at Akaltara. After the dispute was raised and failure of conciliation proceeding, the dispute is referred for adjudication. That as per order dated 28-8-03, workman was transferred to Himachal Pradesh. Ist party prays for cancellation of order of transfer and promotion and posting on appropriate posts.

3. 2nd party filed written statement at Page 6/1 to 6/8 opposing claim of workman. 2nd party raised preliminary objection that workman filed WP No. 2821/03 in High Court at Bilaspur. The petition is pending for decision. The reference is not tenable and deserves to be dismissed. 2nd party further submits that due to exigency of work and requirement of finance staff at Calcutta office. Management decided to transfer office from Akaltara to Calcutta Zonal Office. Message in that regard was received by Akaltara plant. Accordingly workman was transferred to Calcutta vide order dated 25-6-89. Workman had requested cancellation of order of his transfer. Vide order dated 19-7-89, General Manager asked workman for duty at Calcutta Zonal Office. Workman submitted representation regarding his transfer. Vide order dated 8-9-89, management informed workman that he may approach management and draw payment from cash counter. Workman represented for consideration of his transfer. It is submitted that if his transfer is not concerned, he will be reverted in his previous post. Workman had subsequently reported to zonal office on 28-10-89. He

unauthorisely remained absent without sanctioned leave or permission. During the period of his absence, workman filed Writ petition 4366/89 in MP High Court seeking reversion of wage board scaler and posting back to Akaltara unit. Vide order dated 22-11-90, Hon'ble High Court directed management to decide representation of workman within one month. Management considered his representation and issued order dated 5-3-91 transferring workman back to akaltara unit. Workman submitted representation dated 13-2-91 that he may be reverted to his earlier post in wage board Grade and post him at Akaltara. Workman agreed for his pay fixation in above grade. Accordingly order dated 5-3-91 was issued. Consequent upon reversion of workman was to draw pay as Assistant Account in wage Board Scale Rs.700-40-1500. That taking into account, notional increment agreed to him, he was not promoted as accountant in central scale of pay. Workman reported to Akaltara on his transfer and reversion submitting joining report on 29-3-91. Workman was promoted vide order dated 12-3-01 to payscale under CCI Stagnation scheme. Later in March 2001 clarification regarding terms and conditions of his service after promotion had not given his acceptance of his promotion order dated 12-3-01. Workman continued to draw pay in wage board scale since he had not given letter of assurance to pay scale. Workman filed letter dated 30-11-2001 sought clarification regarding terms and conditions of his service on promotion. 2nd party admits order of transfer of workman was cancelled. In view of undertaking given by the workman, he maybe reverted to the post he was holding at the time of his transfer. That transfer of workman was made according to the terms of appointment. It is submitted that workman is not entitled to any relief.

4. Workman filed rejoinder at Page 18/1 to 18/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Cement Corporation of India, Akaltara, Distt. Janjgir- Champa (CG) in reverting Shri Jeeth Singhy Kshathri from the post of Accountant to the post of Assistant Accountant is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is entitled to any relief.

REASONS

6. Before dealing with the points on merit of the reference, it is appropriate to consider the certain circumstances appearing from record. Workman had submitted application dated 29-9-04 for transfer of the reference apprehending he may not get justice. Letter dated 4-10-04 & 7-10-04 was submitted by workman that he had tried to serve application relating to contempt of Court, the management had refused. The remarks of Presiding Officer in the matter of transfer of reference were called vide dated 20-7-62, 6-11-12. The remarks were submitted by my predecessor as per letter dated 1-8-12, 21-11-12, however no order of transfer of reference was received.

7. Workman filed affidavit of his evidence dated 14-3-2011. However workman failed to appear for his cross-examination. Despite notices were issued to workman on 17-10-13, 27-1-14, workman did not appear, his evidence was closed on 26-2-14. As workman failed to appear for his cross examination, his evidence cannot be considered.

8. Exhibit W-1 is order dated 22-11-90 passed by Hon'ble High Court. Management was directed to decide representation of workman within a period of one month. Exhibit W-2 is copy of office order dated 5-3-91. The pay of workman was fixed in reverted wage Board Scale Rs.700-14-1500. Exhibit W-4 is copy of Exhibit W-1 only. Exhibit W-5 is copy of order dated 5-3-91 i.e. copy of Exhibit W-2. Exhibit W-6 is office order dated 2-9-2013. Workman along with other employees were transferred. Ist party workman was transferred as Assistant Accountant II Rajbhan Cement Factory as Assistant Accountant. Exhibit W-7 is office order dated 21-6-89. Workman was transferred and posted to Calcutta Zonal Office as Accountant. Exhibit W-8 is letter dated 9-8-04 in the matter of representation submitted by workman.

9. Management filed affidavit of evidence of witness Umashankar, Assistant Manager supporting contentions of management. Workman was appointed as Junior Asstt on 8-6-76. Appointment Letter Clause-V provided that service of workman were transferred anywhere in India in any branch etc. workman had accepted conditions of his service submitting joining report. Workman was promoted as per order dated 24-9-85. Joining Report was submitted by workman on 3-10-85. Workman as transferred from Akaltara plant. Workman had requested cancellation of his transfer but his request⁵ was not acceded. After order passed in WP 4366/89 dated 22-11-90, representation submitted by workman dated 13-2-91 was allowed. The office order dated 5-3-91 was issued upon reversion of workman as Assistant Accountant in Wage Board Scale 700-400-1500. Evidence of management's witness remained unchallenged. From evidence of management's witness documents Exhibit M-1 to 6 are admitted in evidence. Exhibit M-1 is copy of Writ Petition No. 2821/03 filed in Chattisgarh High Court at Bilaspur. Exhibit M-2 is letter dated 12-7-76 sent to workman regarding acceptance of appointment and terms and conditions. Exhibit M-3 is copy of joining report submitted by workman. Exhibit M-4 is copy of office order dated 24-9-85. Exhibit M-5 is copy of joining report submitted by workman. Exhibit M-6 is copy of letter dated 2-9-89. Exhibit M-7 is copy of order passed by Hon'ble High Court in WP No. 4366/89. Exhibit M-8 is copy of Joining report submitted by workman.

10 The evidence on record shows that after workman was promoted to the post of accountant and transferred to Calcutta Zonal Office, he had submitted representation and willingly accepted reversion. His representation was accepted by the management and workman was transferred back to Akaltara. Exhibit M-9 appointment order shows that services of workman were liable to be transferred at sole discretion of corporation anywhere in India or to any branch/ section/unit of the corporation. As the evidence on record shows that workman as promoted, he submitted representation accepting reversion to the post held by him. The case of Ist party workman for promotion is not established. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पयूचर जेनेरली इंडिया लाइफ इश्योरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 39/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-17012/9/2011-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2012) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Future Generali India Life Insurance Company Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-17012/9/2011-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/2012

Shri Atul Bhatia,
C/o Shri Pankaj Dubey, Advocate,
Near Bridge No.2,
North Civil Lines,
Jabalpur.

...Workman

Versus

Future Generali India Life Insurance Company Ltd.,
1276- Raj leela Towers,
Wright town,
Vishal Megamart road,
Jabalpur.

...Management

AWARD

Passed on this 9th day of June 2016

1. As per letter dated 22-2-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-17012/9/2011-IR(M). The dispute under reference relates to:

“Whether the action of the management of Future Generali India Life Insurance company Ltd., Jabalpur in terminating the services of Shri Atul Bhatia, Ex-Sales Manager Agency w.e.f. 27-9-2010 is legal and justified? What relief the workman is entitled to?”

2. After receiving order of reference, notices were issued to the parties. Despite of notice issued on 15-7-2013, 21-2-2014 by RPAD, workman failed to appear in the matter. Ist party workman is proceeded exparte on 26-3-2014.

3. 2nd party filed exparte Written Statement. Case of 2nd party that it is registered under Company's Act 1956 carrying insurance business. Ist party is not covered as workman under ID Act as he was to carry out policy in accordance with mutually agreed targets. The performance of Ist party was not satisfactory. Ist party workman had to identify the potential LIC Agent capable to attain said targets. He was also required to arrange training of potential advisors for conducting insurance business. It is reiterated that Ist party is not covered as workman. He was earning salary Rs.24000/- per month. Ist party workman carrying supervisory and managerial role, as such Ist party is covered in exception under section 2(s)(iv). Ist party is not covered under ID Act. His services are covered by the conditions of his appointment within contractual rights. Ist party was appointed as Sales Manager. It is denied that workman was not assigned with any administrative or supervisory work. Workman had failed to achieve targets of insurance business. His services were terminated considering his performance in service. His work was regularly monitored and found poor. Workman doesnot deserve any kind of relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Future Generali India Life Insurance company Ltd., Jabalpur in terminating the services of Shri Atul Bhatia, Ex-Sales Manager Agency w.e.f. 27-9-2010 is legal and justified?	Ist party has not participated in the reference proceeding, the dispute could not be decided on merit.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to legality of termination of services of Ist party workman. However he has failed to participate in reference proceeding. Workman is proceeded exparte on 26-3-2014. 2nd party filed exparte Written Statement but 2nd party failed to adduce evidence. Thus both parties have not properly participated in the reference proceeding, the dispute could not be decided on merit. Workman is not entitled to any relief.

6. In the result, award is passed as under:-

- (1) The reference could not be decided as both parties failed to participate in reference.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1514.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. एम. डी. सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 81/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-26011/4/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. NMDC Ltd. and their workman, which was received by the Central Government on 12.07.2016.

[No. L-26011/4/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/81/14

Secretary,
 Bhartiya Khadan Mazdoor Sangh,
 Bacheli Branch, BIOM, Bacheli Complex,
 Distt. Datwada, CG

...Workman/Union

Versus

General Manager,
 NMDC, BIOM,
 Bacheli Complex,
 Bacheli, Distt. Datwada(CG).

...Management

AWARD

Passed on this 16th day of June 2016

1. As per letter dated 27-10-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26011/4/2014-IR(M). The dispute under reference relates to:

“Whether the action of the management of NMDC Ltd. Bacheli Complex, BIOM Dantewada (CG) awarding punishment of demotion to the post of Field Attendant I the scale of Rs.8900-3%-12,400 (RS-1) to Shri Vijay Masih is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman failed to appear in reference proceeding despite repeated notices issued to him.

3. 2nd party appeared in the reference proceeding through Advocate Shri A.K.shashi. during pendency, letter is received from Union Secretary, Vijay Masih that he is withdrawing his claim. Management has given no objection. After verifying Ist party was promoted to withdraw his claim. Consequently No dispute Award is passed.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई स्टील प्लांट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 84/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-43012/2/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 18th July, 2016

S.O. 1515 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 12.07.2016.

[No. L-43012/2/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/84/14**

Shri Kuldeep Singh
H. No.276, 4- Shanti Nagar,
Bhilai,
Distt. Durg (CG)

...Workman

Versus

Executive Director(P),
Bhilai Steel Plant,
Bhilai Ispat Bhawan,
Bhilai, Distt. Durg (CG)

...Management

AWARDPassed on this 6th day of June 2016

1. As per letter dated 31-10-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-43012/2/2014-IR(M). The dispute under reference relates to:

“Whether the action of the management of Bhilai Steel Plant in denying the employment to Shri Kuldeep Singh and 601 other workmen on the ground of violative of Article 14 & 16 of the Constitution of India even when their names were sent under Employment Exchange (Compulsory Notification of vacancies) Act, 1959 by employment Exchange complying Article 14 & 16 of the Constitution is justified? If so, what relief these workmen represented by Shri Kuldeep Singh and 601 other are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workmen submitted statement of claim. Case of 1st party workmen is that workman Kuldeep Singh and 601 others passed ITI. Their names were registered in Employment exchange at relevant time. Their names were called for written test for post of Trade Apprentice (non-executive cadre) at Bhilai steel Plant by 2nd party. Their names were called by Employment Exchange in terms of Employment Exchange (compulsory Notification of Vacancies) Act, 1959. All the workmen of ist party had cleared Written test, interview for said post. After their medical examination, they were sent for training. All workmen completed training and are from batch of 68 to 75. Ist party submits that term Apprentice provided under standing orders of Bhilai Steel Plant means persons engaged for training with a view to their eventual employment under the company on satisfactory completion of training and who will be paid a stipend or allowances during the period of training. The term eventual employment under the company on satisfactory completion of training is important part of said definition. Ist party workman on satisfactory completion of training ought to have been made permanent in establishment of 2nd party. They were entitled for eventual employment. However for extraneous considerations, they were not made permanent. The employee junior to Ist party workman and so similarly placed employees who went through the same recruitment procedure on the post of Trade apprentices as cleared by the workmen were regularized in Grade S-3 and S-1. Total 8007 trained Apprentices were regularized till 2001 in Grade S-3 and in the year 2004 Grade S-3 was changed to Grade S-1 and 127 trained Apprentices were regularized by way of Part II order. It is alleged that in discriminatory manner without following the principles of seniority, the respondent had regularized total 8134 Trained Apprentices whereas the workmen were not given said benefit. Ist party alleged discriminatory approach against Ist party workman Trained Apprentices. That some of the trained apprentices committed suicides as their legitimate expectation for permanent job was denied. The trainees who were sent in Nandani Mines and Dalli Rajhara Mines were regularized whereas the persons like workmen who remained in the Plant were not regularized. Ist party further submitted workman approached 2nd party for redressal of their grievance was of not avail. Workman got their grievance in newspaper to show that respondent was not taking action. Respondent had given false assurance that some day workmen will be regularized. Workman further submits that there is requirement of man power in establishment of 2nd party instead of permanently absorbing workman. 2nd party started denying claims of workmen. The vacancies were notified to be filled through open competition. That most of workman have become overage for the post in question. They cannot be made to undergo the Written Test once again and face present day competition. That they had already undergone procedure for appointment for said post. They have preferential right for the claim. Action of management providing only age relaxation to the workman but it was no use to workman. 2nd party wants to bury the claim of those workmen abusing their powers high handedly.

3. Ist party workmen further refers to ratio held in case of UP State Road Transport Corporation and another versus UP Parivahan Nigam Shikshit Berozgar Sangh reported in AIR 1995-SC-1115. The Ministry of Labour, Directorate of Employment and Training issued circular dated 22-5-96 addressed to all Ministries etc. stating that trained apprentices should be given preferential treatment direct recruit candidates and a list of trained apprentices should be prepared yearwise and those who have passed the training earlier than their compatriot shall be treated as

senior and they are entitled for job as per the seniority. 2nd party knowing said circular and the ratio held by Apex Court in above said case disobeyed the circular and the judgment by Apex Court by absorbing junior workmen to Ist party workmen. It is further submitted that management filled up said post through direct recruitment time and again instead of absorbing them. Action of the management of 2nd party alleged to be violative of Article 14,16 of constitution and also colourable exercise of powers. Ist party workmen submits that it is necessary to absorb those workmen permanently.

4. Workmen further submits that Government of India, Director of Training and Employment in its letter dated 31-8-78 emphasized on the facts that scheme of unemployed persons and that if employers would not provide chances of employment to the qualified apprentices the same would amount to destruction of developed human resources. However it was desired that other things being equal trained apprentices should be given preference in case of employment. The government of India in its letter dated 23-3-83 even desired reservation of 50 % vacancies for trained apprentices. The management's action is de hors the desire of Government of India and to the detriment of the persons like the present workmen.

5. Ist party workmen raised ID, matter was taken into conciliation by Competent Authority under the Act. The respondent denied to settle the matter during conciliation proceeding. The list of workmen was submitted to the management for verification and verified list was sent to Ministry of Labour. On failure of conciliation, the matter is referred for adjudication to this Tribunal as per order dated 31-10-2014. After knowledge of the order of reference, 2nd party management published advertisement in Navbharat dated 20-12-2014 for filling of various posts including the post for which workman have preferential right. Office of the Collector, Durg and Dy. Director Industrial health, Labour Department vide letter dated 20-10-14 had directed 2nd party management to take positive steps about regularization of those workmen. Vide letter dated 31-12-14, General Manager, Bhilai Steel Plant was contented that the dispute was already referred for adjudication to this Tribunal. Management was aware about the order of reference to this Tribunal in violation of Section 33 of ID Act, management is filling up post through direct recruitment. Workman had approached Conciliation Officer, Dy. Chief Labour Commissioner, Raipur with regard to violation of Section 33 of ID Act. The complaint was submitted on 1-1-15. After preliminary enquiry/ joint discussion, the Conciliation Officer found the existence of ID between the present parties. Management submitted reply dated 9-1-2015 contending that workmen are Ex. Trade Apprentices and they are not workman as per law. That instead of admitting their apparent mistake and violation of Section 33 of ID Act, they stated that the matter is pending before this Tribunal. Workman should wait till adjudication of the dispute. Management is having no regards to the provision of ID Act. The failure report was submitted by Conciliation Officer vide letter dated 20-1-15.

6. Workman had submitted application for interim relief praying stay of further action in pursuance of advertisement dated 28-12-14 and restrain the respondents from filling up the posts as mentioned in the advertisement till adjudication of the present case. Ist party workman alleged violation of Section 33 of ID Act and prays suitable action may be taken against the erring Officer by punishing him with imprisonment for a period of six months or by imposing fine.

7. The contentions of management was to show initial entry of workman as workman for training as Trade Apprentice is governed by the provisions of Apprentice Act, 1961. In fact the provisions of the said Act is not applicable because no contract of apprenticeship as is required to be made was entered into between the workmen and the management and even if it was there in existence the same was not sent by the respondent under Section 4 of said Act to the Apprenticeship Adviser for registration. So the plea of management that Ist party workmen are not workmen in view of provisions of Apprenticeship Act is absolutely misconceived and baseless. On such contentions, workman prays that reference be answered in their favour. That action of 2nd party management not regularizing services of workmen making them permanent on post of attendant is discriminatory is illegal. That management be directed to regularize workmen Kuldeep Singh and 601 others on the post from the date when other similarly placed employees and juniors were regularized. The consequential benefits and cost be allowed.

8. 2nd party management filed Written Statement opposing claim of workman. Preliminary objection is raised that claim of Ist party that they are Trade Apprentice is covered by Trade Apprentice Act 1961. Ist party are not workmen. Provisions of ID Act are not applicable in the matter. The dispute is not maintainable. The present dispute is not raised by Union rather it is raised by individual Kuldeep. He was not authorized by others to take up issue on their behalf. The other claimants have not authorized Shri Kuldeep Singh to represent them as no authorization has been filed before before this Tribunal. That statement of claim is signed and verified by Shri Kuldeep Singh, it cannot be treated as statement of claim on behalf of rest of claimants. The order of reference dated 31-10-14 is not accompanied with list of claimants. In absence of particulars of 601 claimants, the reference cannot be adjudicated.

9. 2nd party further submits that Bhilai Steel Plant is unit of Steel Authority of India Limited. As per provisions of Trade Apprentices Act, 1961, the management of Bhilai Steel Plant has to provide training to certain number of apprentices. The apprentices are to be sponsored by the authority under the provisions of said Act. The management of Bhilai Steel Plant provides training to the apprentice each year in all trades. Trade Apprentices were given training in Bhilai Steel Plant for a period of 1-2 years depending on trade. The number of apprentices to be engaged in training was decided by notifications from the Competent Authority of Central Government (Director of Training, Board of

Apprentice Training, Kanpur). That as per Section 22(1) of Trade Apprentice Act 1961, it is not obligatory on the part of employer to offer any employment to any apprentice who has completed the period of his apprentice training in his establishment nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

10. Management of 2nd party has recruitment policy. The recruitment is done in accordance with said policy. In order to meet manpower requirement of Bhilai Steel Plant and to induct competent personnel in terms of requisite qualification, skill, physical status, aptitude and merit, vacant posts in non-executive cadre were notified to the local Employment exchange in accordance with the provisions of the Employment Exchange Act 1959. Said notification of vacancy to the Employment Exchange was done time to time depending upon the number of posts and the level required to fill up so as to take care of not only the immediate present vacancies but also the vacancies which are likely to arise in future either due to separation of employees, retirement or any other count and also making provisions for future expansion of various units of Bhilai Steel Plant. Panels of selected candidates after selection were drawn which were used to fill up the immediate vacancies as well as vacancies likely to arise in future as per the need and requirement of the Plant. Bhilai Steel Plant in past had recruited technician cum operative trainees with ITI qualification in two categories. One as TOT- 6 months was recruited from Trade Apprentice trained by BSP after they cleared All India trade Test. 2nd known as TOT 18 months were recruited on notifying the vacancies to the Employment Exchange and from out of the candidates sponsored by them. That as per provisions of Trade Apprentice Act 1961, Bhilai Steel Plant had to give training for atleast 385 persons on different trades. The candidates for Trade apprentices were obtained on sponsoring by the Employment Exchange and they were selected after qualifying through a written test and interview. The trade apprentices were required to clear the All India Trade Test conducted by National Council for Vocational Training. It is submitted that in the offer of training to Trade Apprentices, there is a stipulation that there is no guarantee of their employment in Bhilai Steel Plant on completion of training. However the company has been recruiting TOT six months out of these Trade apprentices trained by the Bhilai Steel Plant who have cleared AITT. Such Trade Apprentices are required to undergo training for six months. But their names are not sponsored by the Employment Exchange for the purpose recruitment during the period from 96 to 2003. Bhilai Steel Plant has inducted around 900 TOTs from Trade Apprentices. Presently there are about 1000 Trade Apprentices who have cleared All India Trade Test and have not been considered for employment in Bhilai Steel Plant.

11. 2nd party management further contends till AITT batch No.67 candidates were appointed as TOT 6 months and after training regularized in S-3 grade. In the year 2002, considering the requirement of skilled as well as unskilled manpower at lower level, a new designation named Attendant cum Technician Trainee(ATT). Attendant cum operative Trainee in S-1 grade was introduced. All the 84 candidates from AITT branch No. 68 were appointed as ATT. The particulars of TAs not absorbed in Bhilai Steel Plant is shown in Para-10 of the Written Statement. For 68 batch-passing year 98 is 51, for batch 69-passing year- 1998 is 205, for 70 batch-passing year 1999 is 221, for 71- passing year 1999 is 233, for batch 72 passing year 2000 is 135, for batch 73 passing year 2000- 156, for batch 74 passing year 2001 is 39, for batch 75 passing year 2001 is 7- total 1047 were not absorbed in Bhilai Steel Plant.

12. 2nd party further submits that one Shri Srilal had filed a Writ Petition before the Hon'ble High Court of Chhattisgarh at Bilaspur. Hon'ble High Court passed order dated 19-1-04 on the report dated 3-12-03 of Managing Director duly supported by an affidavit has been filed. Management had submitted that no further recruitment from old panel will be made by Bhilai Steel Plant. It was also submitted that Bhilai Steel Plant will inform all future vacancies in the category of Trade Apprentice to the Employment Exchange and the recruitment will be done strictly in accordance with provisions of Employment Exchange Act 1959. And open advertisement will also be made in newspaper. 2nd party management submits that Hon'ble High Court specifically held that recruitment in future should be through the Employment Exchange as per the provisions of Employment Exchange Act 1959. And open advertisement in newspaper. The process of recruitment from among Trade Apprentices was stopped after 2003 consequent to order of Hon'ble High Court of Chhattisgarh, Bilaspur. That from the year 2004 onwards as soon as vacancy arose, management had given wide publicity through newspaper as well intimated vacancy position to the Local Employment Exchange time to time. In all advertisement, it was specifically stated that in case of Trade Apprentice, age relaxation would be given. Yearwise vacancy position as to vacancies received against those vacancies and selections made out of 1047 trade apprentice is given in Para 15 of the Written Statement. In 2004 post advertised is 40 SRD-ST, applications received is 4000 and 5 joined, in the year 2005, post advertised were 1000, applications received were 10,000 and nil joined, in the year 2007-08 posts advertised were 3, applications received were 138 and none joined. In the year 2008- 90 posts were advertised, 11,444 applications received and none joined, In the year 2009, 37 posts were advertised, 4255 applications received and 13 joined, in the year 2011, 83 posts were advertised, 9374 applications received and 27 joined. In the year 2013- 358 posts advertised, 1,24,741 applications received and 18 joined. In the year 2014- 119 posts advertised and recruitment activity is under process.

13. 2nd party submits that advertisement issued in daily newspapers from the year 2004 to 14 are produced. Letter issued to Local Employment Exchange intimating them the vacancy positions are also submitted. That as per advertisement and intimation given to Employment Exchange, management issued number of applications including the applications out of 1047 Trade Apprentices. The selections were against these Trade Apprentices are shown

above. The vacancies were published in newspaper as well as information was given to Employment Exchange as per order dated 19-1-04 passed by Hon'ble High Court in Writ Petition No. 258/03 2nd party also refer to the recent judgment by Apex Court dated 7-8-2014 in case of State of Bihar versus Chandreshwar Pathak. Management had invited applications for selection of post of Operator-cum-Technician (Trainee), operator-cum-Technician, Attendant –cum-Technician (Trainee), Mining Foreman and Mining Mate by publishing employment notification in several newspapers. The extracts of publication are produced. Information was also given to Local Employment Exchange vide letter dated 29-12-2014. 2nd party reiterates that as per the order passed by High Court, CG dated 19-1-04 in Writ Petition No. 258/03, it is mandatory on part of management of BSP to intimate the vacancy position to the employment exchange and open advertisement will also be made in newspaper. That Bhilai Steel Plant is Central Public Sector Undertaking and bound to follow the provision of the constitutions of India. The entire vacancy cannot be exclusively reserved for the claimants only because they were given training of trade apprentice. They will have to compete with other eligible candidates. The maximum reservation they may ask for preference over non-trained direct recruit as held by Honble Supreme Court in case of UP State Road Transport Corporation reported in AIR 1995-SC-1115. The demand of claimants that the management should be prevented from selection from open competition is unknown to the law and contrary to the settled law of the land. It is reiterated that the Ist party claimants are not workmen, they are only apprentice. Management has only provided them training under Apprentice Act 1961. That Apprentice is included in the standing order as the standing order specifies the working conditions inside the factory premises in order to maintain discipline and safety of the persons entering the factory. That in factory premises, permanent employees, temporary employees, probationers, apprentices, casual employees, substitutes or badlies are entering. 2nd party management denies that similarly placed and junior to Ist party claimants were given employment. Trade Apprentice Act doesnot make it obligatory on part of the establishment to eventually provide employment in the trade they were given apprentice training as the vacancy exists in the relevant trade and those trained TAs who were well versed with the factory working were given permanent employment. Management started recruitment process in the year 2003, out of TA Batch No.68 consisting of 151. BSP had offered permanent employment to 100 TAs and only 84 finally joined after clearing selection process. The claimants have filed list of trade apprentice. The particulars given in the list of claimants are incorrect and misleading.

14. Management submits that one Shri Srilal had filed a petition challenging the procedure adopted by the management for providing employment to the trade apprentice alleging that the management is adopting the pick and choose method to provide employment to the interested persons. The selection procedure adopted by management including appointment made of Trade Apprentice were challenged. Hon'ble High Court specified the guidelines for future appointments to be made by the management. The practice of appointing AITT passed TAs to the post of TOTs 6 months without notifying the vacancies to Local employment exchange and also appointing persons from among the candidates empanelled earlier for the post of TOTs were challenged. It is reiterated that vacancies were reported to Employment Exchange as per Act of 1959 and advertisement was issued in the newspaper. That Hon'ble High Court repeatedly in different petitions struck down the said procedure being contrary to the Articles 14 & 16 of the Constitution of India. Hon'ble High Court has specified guidelines to be followed in future appointment. On such ground, 2nd party prays that reference be answered in its favour.

15. Workmen filed rejoinder reiterating their contentions in statement of claim. The action of management calling names from Employment Exchange shows the intimation to fill the post and it was not exercised to provide training as Trade Apprentice. It is submitted that there is huge difference between a mere trainee who is selected through campus selection ITI and provided training under the Apprentice Act 1961. The certified standing order provides for eventual employment to the apprentice. Respondent had not followed provisions of Apprentice Act 1961. The Ist party claimants were not paid stipend Rs.1490 per month. They were paid only Rs. 770/- per month. That contention of management that it is not under obligation to provide employment under Apprentice Act is misconceived. That Bokaro Steel Plant which is one of the unit of Steel Authority of India Limited is following provisions of standing orders by recruiting only those who have passed Apprentice Training from AITT. Denial of permanent appointment to Ist party would result in loss of public money. That the provisions of standing orders prevail over provisions of Apprentice Act. The rejoinder is submitted by Ist party claim is argumented to support their claim for permanent appointment.

16. Interim application was decided vide order dated 8-2-2015. Application to stay recruitment process was rejected with observation that advertisement dated 28-12-2014 shall be subject to decision of present reference.

17. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the Ist party claimants are covered as workman under Section 2(s) of ID Act?	In Negative
(ii) Whether the reference is maintainable?	In Negative

(iii) Whether the action of the management of Bhilai Steel Plant in denying the employment to Shri Kuldeep Singh and 601 other workmen even when their names were sent under Employment Exchange by employment Exchange complying is violative of Article 14 & 16 of the Constitution?	Redundant
(iv) If so, to what relief the workmen is entitled to?"	Workmen are not entitled to any relief.

REASONS

18. The parties are in serious dispute whether Ist party claimants are covered as workmen under Section 2(s) of ID Act. Consequently whether parties are also in serious dispute about tenability of reference. In para-1 of statement of claim, Ist party has pleaded that their names were called for Written Test for the post of Trade Apprentice (Non-executive). In Para 2 of the statement of claim, it is pleaded that after clearing Written Test and interview for said post, after medical examination, workman was sent for training. They have successfully completed training also. Workmen belongs to 68-75 batch. The standing orders of Bhilai Steel Plant defines apprentice means persons engaged for training with a view to their essential employment under the company on satisfactory completion of training and who will be paid stipend or allowances during the period of training. In Para 4 of the statement of claim, it is pleaded that Trade Apprentice Test cleared by workman were regularized in Gr.S-3, S-1. Total 8134 TAs were regularized in S-1, S-3 grade. Claimants were denied permanent appointment. 2nd party in its Written Statement submits that apprentices are covered by the provisions of Apprentice Act 1961, Apprentices are not workmen. The definition of workmen under Section 2(s) of ID Act provides –

“ Workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but doesnot include any such person-

- (i) Who is subject to Air force Act, 1950 or the Army Act, 1950 or
- (ii) Who is employed in the police service or as an officer or other employee of a prison, or
- (iii) Who is employed mainly in a managerial or administrative capacity or
- (iv) Who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises a either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

Section 18 of Apprentice Act 1961 provides-

Save as otherwise provided in this Act-

- (a) Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and;
- (b) The provisions of any law with respect of labour shall not apply to or in relation to such apprentice.

19. Keeping above definition in view, it is required to consider the evidence of parties. In his affidavit of evidence, Kuldeep Singh says that he alongwith 601 others receiving training from Industrial Training Institute and got certificate from ITI sought names from Employment Exchange for filling up sanctioned post of TA (non- executive cadre), his name as well as names of 601 employees of present case were sponsored by Employment Exchange. He and 601 others involved in present case cleared Written Test and interview for said post and after medical examination, Bhilai Steel Plant sent us for the training. Educational Council for Vocational Training awarded certificate to us after successful completion of training. Bhilai Steel Plant provided temporary appointment on NMR for period of 3 months in the year which was extended.

20. Shri Balbadra Soni in his affidavit of evidence has made similar statement that Bhilai Steel Plant sought names from Employment Exchange for filling up the vacant and sanctioned opost for TAs(non-executive cadre) . His name as well as names of 601 employees of present case were sponsored by Employment Exchange at relevant time for said post in response to the requisition made by Bhilai Steel Plant. He and 601 others in the case cleared Written Test and interviewed for said post after medical examination and police verification. Bhilai Steel Plant sent them for training. National Council for vocational training awarded certificate to them after successful completion of training.

21. Manharlal Sahu in his affidavit of evidence says he belong to 70 batch. He completed Apprentice training in March 99. After completion of training, despite filling of attestation form, permanent employment was not given to

him. All the witnesses have stated that they are giving evidence for themselves and other claimants. Kuldeep Singh in his cross-examination says that list of 602 persons is annexed with his affidavit. The claimants were for fitter trade, 262 candidates had passed ITI. He doesnot know whether Bhilai Steel Plant had given requisition letter to Employment Exchange for particular post. He denies that the claimants were engaged as Apprentice under Act of 1961. That he was given appointment letter in writing. All the claimants were given appointment letters. The appointment letters are not produced. Appointment letter of Dek Singh Charu is produced. Before appointing him, he was given training during March 98 to March 99,, training was given for 2 years to the claimants passing 2 years ITI and one year training to the claimants passing one year ITI. He was unable to tell whether he was paid salary or stipend during training period. He knows that under Apprentice Act, the candidates in ratio of 7: 1 are given training. Manharlal Sahu in his cross-examination says he was not given appointment letter, he claims that attestation form is the appointment letter, no separate appointment letter was given to him. He doesnot know the name of form got filled by Bhilai Steel Plant from him. He further says that he was not kept as apprentice. He received letter from Employment Exchange for interview for post of fitter. He denies that he signed on blank attestation form and retained its zerox copy with him. Only he submitted attestation form. He did not submit any documents. He received training during 28-3-98 to 28-3-99.

22. Management's witness Shri Vikas Chandra in his affidavit of evidence says as per provisions of Apprentice Act 1961, Bhilai Steel Plant given training of different trades. The candidates for Trade Apprentice were obtained through Employment Exchange were selected by Written Test, interview for training under Apprentice Act. In his cross-examination, management witness admits that during 1995-200, request for apprentice was sent to recruitment section. There is no post of Trade Apprentice. He denies that Trained Apprentice is regularized on post of Trade-cum-operating Training. Management's witness admits that 8134 apprentice are regularized as Technician cum Operating trainee. He claims ignorance whether written test was held for apprentice. Certified standing orders are applicable to establishment of 2nd party. Management's witness further explains that Trade Apprentice were not regularized. They were appointed after interview in TOT Section. That apprentice was not regularized as per Exhibit W-6.

23. Documentary evidence produced by Ist party Exhibit W-30 is letter issued by Employment Exchange Officer, Durg for interview for post of TA(Fitter) – stipend Rs.580 per month. Exhibit W-31 is copy of Employment Exchange card of Pawan Kumar. Exhibit W-1 is interview call for TA(Motor Mechanic) of Pawan Kumar for Written test to be held on 6-7-96 at 2.30 PM. Exhibit W-2 is interview call for candidates passing Written Test, candidates were called to attend interview alongwith Employment Exchange Card, documents of matriculation, ITI passed certificate, I card etc. the interview was to be held on 23-8-96. Exhibit W-3 is letter issued to the successful candidates in view for medical examination directing to attend along with Employment Exchange Card, documents of educational qualifications, ITI passed certificate and admit card. Exhibit W-4 is letter issued to Pawan Kumar for engaging him for 3 months from April 99 to June 99. Exhibit W-33 is the attestation form. My attention was pointed out by Shri Pranay Choubey for Ist party, last column to be filled by office leaving blank space for filling P.No. The evidence of Kuldeep Singh that he was not appointed as Apprentice but he was directly appointed to the post of Trainee Apprentice is not consistent with the pleadings in statement of claim. His evidence that he was appointed on post of Trainee Apprentice cannot be accepted as he was unable to tell whether he was paid salary or stipend.

24. The documents Exhibit W-5,6,7 are the orders of regularization after completion of training are Part II order has no direct bearing as to whether Ist party claimants are covered as workman. Similarly documents exhibit W-9, 10, 12 to 21 are not relevant for decision of above point. Evidence of Ist party claimants and evidence of management's witness is consistent that Ist party workmen were selected for apprentice training after their names were sponsored through Employment Exchange.

25. Learned counsel for Ist party Shri P.Choubey submits that certified standing order of 2nd party Exhibit W-27,28 defines Apprentice means a person engaged for training with a view to their eventual employment under company on satisfactory completion of training and who will be paid stipend or allowance during a period of training. Emphasizing the definition of apprentice in standing order, learned counsel submits that Ist party claimant are covered as workman. Provision in standing order for eventual employment itself cannot cover them as workman. In support of arguments, Shri P.Choubey relies on ratio held in case of

M/s. Larsen and Toubro Ltd versus State of Orissa and others in Writ Petition No. 18088 of 2010. In Para-6 of the judgment, it is observed that at this Juncture, it may be noted that Section 2(s) of ID Act was substituted in 1984, it provide that workman includes apprentice and said definition is adopted in Rule 3© of Rules 1994 for purpose of verification of membership and recognition of Trade Unions whereas Apprentices Act was enacted in 1961 with a view to regularize the training condition of the apprentices. The provisions of Apprentice Act 1961 governs the field for which the said Act was enacted. We are here concerned with verification of membership and recognition of trade Unions. Therefore provisions of the rules 1994 as well as Section 2(s) of ID Act 1947 which was substituted in the year 1984 being Special Statutes those prevail over the Apprentice Act, 1961 which is a general law.

26. Learned counsel for 2nd party Shri A.K.Shashi on the point relies on catena of cases.

In case of National Small Industries Corporation Ltd versus Lakshminarayan reported in equivalent citation 2007-1 SCC(L&S)-145. Their Lordship of Apex Court dealing with Section 18 of Apprentice Act 1961 and Section 2(s) of ID Act. Under Section 18 of Apprentice Act, he is not workman within meaning of Section 2(s) of ID Act was answered in Negative by Apex Court.

In case between Hussan Mithu Mhasvadkar versus Bombay Iron & Steel Labour Board and another reported in equivalent citation AIR-2001-SC-3290. Their Lordship held Appellant working in Board constituted under Act of 1969- Board was not industry and appellant was not employed in industry- appellant cannot be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Appellant doesnot fall within definition of workman under Section 2(s) of ID Act.

In Para 5 of the judgment, their Lordship observed on careful consideration of respondent, submissions of learned counsel on other side, they are of view that in a case of the nature where the Labour court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of ID Act instead of embarking upon an adjudication in the first instance as to whether the respondent Board is an Industry or not so as to attract the provisions of the ID Act ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue affecting the various kinds of other employees as the character of the Board as an industry or not. The larger issue should have been entertained for consideration only in a case where it could have been disposed of otherwise without going into the nature and character of the undertaking itself. For the said reason and also having regard to the submission made by the learned senior counsel of workman may itself be considered on the supposition that the Board is an industry, they propose to deal with the status of the appellant as to whether he is a workman or not at the first instance and if necessitated on account of our decision on that issue, undertake the larger issue for our consideration and decision.

The pleadings and evidence of Ist party claimant are that after completing Apprentice Training around year 1998 to 2000, Ist party workmen were not continued or regularized. The claimants were not working in establishment of 2nd party prior to raising dispute. Their evidence is silent what kind of work they were doing. In view of ratio held by their Lordship of Apex Court in above cited case, the cases by the Apex Court, ratio held by Orissa High Court cannot be preferred to the ratio held by their Lordship of the Apex Court.

27. Shri P.Choubey further submits that apprentice agreement was not sent to Competent Authority for registration, agreement is not produced. 2nd party management has not followed provisions of Apprentice Act. The provisions of Apprentice Act are not applicable. On above point, Shri A.K.Shashi submits that non-compliance of Section 4(4) of Apprentice Act 1961 and its directory doesnot change character of Apprentice Agreement. He relies on

Ratio held in UPSEB versus Shiv Mohan Singh reported in 2005-I-LLJ-117. Their Lordship held non-registration of the contract of apprenticeship wouldnot change the character of the apprentice and he would not acquire the status of a workman within the meaning of Section 2(s) of ID Act.

In case between Dhampur Sugar Mills Ltd. Versus Bhola Singh reported in AIR2005-SC-1790. Their Lordship of the Apex Court dealing with Section 3, 5 of Employment – respondent was appointed as apprentice in terms of Apprentice Act held he is not workman. Even if he is workman, Labour Court unhesitatingly coming to the conclusion that statutory requirements for affecting valid retrenchment complied with finding of fact recorded by Labour court that Scheme of state Government under which respondent appointed had come to end.

28. Shri A.K.Shashi further relies on ratio held in –

Case between Rajkumar Rastogi versus PO, Labour court reported in 2015(146)FLR188. Their Lordship considering petitioner never being appointed as Trainee and paid stipend of Rs.400 per month. The finding of the Labour Court that workman was appointed as Grainer and period of training was liable to be extended from time to time. In case of absence from training without prior information would be deemed to have voluntarily abonded his training. The finding of Court that workman was simply a trainee and not a workman based on material on record was upheld.

As pointed out in Written arguments by Shri Pranay choubey, any such scheme is not involved in present case. Ratio cannot be applied to case at hand. For reasons discussed above, the Ist party claimants were working as apprentice and received training with 2nd party. They are not doing work as provided under Section 2(s) of ID Act. Therefore I record my finding in Point No.1 in Negative.

29. Point No.2- The tenability of dispute is in serious dispute. In view of my finding in Point No1, Ist party claimants are not workman under Section 2(s) of ID Act, the dispute referred under Section 10 is not tenable. 2nd party submits that dispute under reference is not tenable. Learned counsel for 2nd party Shri A.K. Shashi pointed out my attention to order of reference. Dispute mentioned in the Schedule is whether action of management of Bhilai Steel

Plant in denying the employment to Shri Kuldeep Singh and 601 other workmen even when their names were sent under Employment Exchange by employment Exchange complying is violative of Article 14 & 16 of the Constitution. The jurisdiction of Industrial Court is restricted to the matters provided in Schedule II and jurisdiction of Industrial Court is restricted to the matters covered under Schedule III of ID Act.

In 2nd schedule the matters are included pertains to (1) propriety or legality of an order passed by an employer under the standing orders, (2) the application and interpretation of standing orders, (3) Discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongfully dismissed, (4) withdrawal of any customary concession or privilege, (6) all matters other than those specified in the 3rd schedule.

In 3rd schedule, matters covered pertains to –

- (1) Wages, including the period and mode of payment, (2) compensatory and other allowances, (3) hours of work and rest intervals, (4) leave with wages and holidays, (5) bonus, profit sharing, provident fund and gratuity, (6) shift working otherwise than in accordance with standing orders, (7) classification of grades, (8) rules of discipline, (9) rationalization, (10) Retrenchment of workmen and closure of establishment and (11) any other matter that may be prescribed.

30. Ist party claimants by the dispute under reference are claiming their absorption/ regularization in service from the time employees junior to them were regularized or given permanent appointment, such matter is not included either in Schedule II or III of ID Act.

31. Learned counsel for 2nd party Shri A.K.Shashi in Para 28 of notes of argument submits that it is settled principle of law that absorption and regularization of service can be claimed or granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination. In present case, Ist party is not alleging termination of their services. After completion of Apprenticeship training, they are not working with 2nd party therefore jurisdiction of Labour Court and Industrial Court is restricted to matters covered under Schedule II & III narrated supra. The dispute under reference does not fall within the jurisdiction of this Tribunal.

32. With respect to above, learned counsel for Ist party Shri P.Choubey submits that this Tribunal is bound to decide the reference made by Competent Government. Learned counsel relies on ratio held in-

Case between State of Himachal Pradesh versus Raj Kumar reported in 2015-LIC-3954. Their Lordship held the Labour Court is bound to decide reference made by State Government without touching aspect of delay and laches.

In present case, in view of finding in Point No.1, Ist party are not covered as workman. The claim of workman for absorption/ appointment is beyond the matters covered under Schedule II & III. Therefore the ratio held in above cited case cannot be beneficially applied to case at hand.

33. Learned counsel for Ist party Shri P.Choubey further submits that the Ist party claimants are denied regularization and thereby the management has committed unfair labour practice and this Tribunal has adequate powers to grant appropriate relief to Ist party claimants. Learned counsel pointed out ratio held in

Case of Harinandan Prasad and another versus Employer IR to Mgt of FCI and another. The order of reference is silent w.e.t. any unfair labour practice. The pleadings in statement of claim are silent about the unfair labour practice on part of 2nd party. In above cited case, their Lordship have considered powers of Industrial Court under Section 30, 32 of MRTU & PULP Act. The provisions of MRTU & PULP Act are not applicable in the matter. Therefore submissions advanced by Shri P.Choubey on the point cannot be accepted. For above reasons, I record my finding in Point No.2 as reference is not tenable.

34. Point No.3- In view of my finding in Point No.1, 2- Ist party claimants are not workman under Section 2(s) of ID Act, the dispute under reference pertains to matters not covered by Schedule II & III of ID Act, the reference is not tenable, the Point No.3 has become redundant. Large number of citations relied by both sides on merit could not be considered as reference itself is not maintainable.

35. In the result, award is passed as under:-

- (1) As Ist party claimants are not covered as workman under Section 2(s) of ID Act, reference is not tenable.
- (2) The dispute under reference could not be decided on merit.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 43/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/53/2014-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 43 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/53/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 43 of 2014

Employers in relation to the management of Kusunda Area, M/S BCCL

AND

Their workman

Present:- Shri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : None
For the workman : Shri K.D.P. Yadav, In person
State : Jharkhand

Industry:-Coal

Dated 13/06/2016

AWARD

By Order No.L-20012/53/2014-IR (CM-I), dated. 07/05/2014, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

“Whether the action of the management of East Basuria Colliery of M/S BCCL in not providing employment to the dependant son of Sri Krishnadeo Pd. Yadav under circular No. BCCL/PA/II/5/2/128/77/31457-618 dated 22.06.1977 issued by BCCL is fair and justified? To what relief the dependant son of Sri Krishnadeo Pd. Yadav is entitled to?”

1. The case is received from the Ministry of Labour on 21.05.2014. After receipt of the reference, both parties are noticed. The sponsoring Union files their written statement on 02.06.2014. The management also files their written statement-cum-rejoinder on 02.09.2015. Thereafter rejoinder and document filed by the parties.
2. The case of the workman is that the workman concerned appointed on 18.08.1970 in East Basuria Colliery of M/s. BCCL and superannuated on 31.07.2009, as such the length of service is Aprox. 39 years .
3. It is further submitted by the workman that on the basis of NCWA III clause 9.4.4 wherein specifically been mentioned that if a workman has completed 35 years of continuous service his son/ dependant is entitled for employment.
4. It is also submitted by the workman that till date NCWA I to NCWA VII is also effective. And at the time of notification of NCWA VIII the clause 1.2 clearly stipulated that the agreement was covered with all categories of employees in coal industries who were also covered under NCWA I to NCWA-VII.
5. He is also submitted that the circular no. BCCL /PA/II/5/2/128/77/31457-618 dated 22/06/ 1977 issued by M/s. BCCL . Wherein also notified that the employee who retired after completion of 35 years of continuous service his son/ dependant is entitled to be employed under the coal companies Act. But after demand made by the workman, management refused to do so , hence Industrial dispute arose.

6. On the other hand, the case of the management is that the employee concerned has retired on 31.07.2009. At the relevant time NCWA VIII was in vogue. As such the benefit covered under NCWA-III which was operative from 01.01.1983 to 31.12.1986, cannot be fastened to a retiring employee who is covered under NCWA VIII.

7. It is also submitted that the provision of clause 9.4.4 of NCWA is available for retiring employee during the tenure of NCWA III. The concerned workman retired on 31.07.2009 as such he is covered under NCWA- VIII which does not provide any such advantage. Hence the claim of the applicant for employment of son/dependant in lieu of retirement of himself after 35 year continuous service is not legal and justified.

8. The short point is decided in this reference is that the concerned workman is entitled one another service of son/dependent in lieu of 35 years service as per circular of BCCL or not.

9. The management submitted that the such provision of NCWA was struck down by the Apex Court with a finding, if this type of provision will be allowed to continue in NCWA other meritorious people will be debarred from company, only back door entry will be encouraged. On the other hand the workman himself submitted that the circular of BCCL i.e BCCL/PA-II/5/2/128/77/31457-618 not struck it is now in power and continue.

10. On perusal of record and judgment of apex Court and In WP (L) 2412 of 2002 of Jharkhand High Court Ranchi Judgment dated 26/07/2012 in same circular & same type of case clearly speaks is quoted below:-

xxx

“The issue that employment of dependant on the basis of the service of his father /parent is no longer res-integra in view of the specific provision contain in part III of the constitution of India and also laid down in the judgment delivered by the Hon’ble Supreme Court of India in number of cases.

xxx

Therefore in question of reference is wholly unsustainable in law and clearly against the settled principle as held by the Hon’ble Supreme Court .

xxx

11. Considering the facts and circumstances of this case, I hold that the action of the management of East Basuria Colliery of M/S BCCL in not providing employment to the dependant son of Sri Krishnadeo Pd. Yadav under circular No. BCCL/PA/II /5/2/128/77/31457-618 dated 22.06.1977 issued by BCCL is fair and justified. Claim disallowed. Hence the dependant son of Krishnadeo Pd. Yadav is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 68/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/27/2005-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 68 of 2005) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/27/2005-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947

Ref. No. 68 of 2005

Employers in relation to the management of Sijua Area, M/s. BCCL

AND

Their workman

Present:- Shri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri B.B Pandey, Advocate

State : Jharkhand

Industry:-Coal

Dated 21/06/2016

AWARD

By order No. L-20012/27/2005-IR (C-1) dated 26/07/2005, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Dhanbad colliery Karmchari sangh from the management of BCCL , Sijua Area that sh. Ruplal Manjhi son-in-law- of late Sitaram Manjhi, deceased workman be given employment on compassionate ground under the provision of NCWA is justified? If so, to what relief is the said Sh. Ruplal Manjhi entitled?”

1. The case is received from the Ministry of Labour on 22.08.2005. After receipt of reference, both Parties are noticed, The workman files his written statement on 13.12.2005. After long delay, management files their written statement-cum-rejoinder on 10.06.2014. No witnesses examined from both side. But document of workman is marked as W-1 to W--9 as exhibit.
2. The case of the workman is that sri Sitaram Manjhi had been working at sendra Bansjora Colliery as Coal dresser and expired on 20.11.1996 at Central Hospital, Dhanbad while in service period of M/S BCCL. After the death of Sitaram Manjhi his dependent son-in-law shri Ruplal Manjhi applied for employment under the provision of NCWA alongwith relevant document. But the management to harase the applicant adopting delaying tactis and without any sufficient reason put some irrelevant question to be answered by the claimant .
3. It is further submitted by the workman that the matter enquired and verified by the administration, as such no delay caused by the claimant, and whatever time was consumed , that was due to faulty and wrong process adopted by the management. Ultimately the management rejected the application under the plea of belated case. Hence Industrial dispute arose.
4. On the other hand the case of the management is that according to provision of NCWA in the event of death of worker only the wife/ husband as the case may be get employment in their absence unmarried daughter, son and legally adopted son shall be entitled to compassionate employment provided the aforesaid dependant applied for employment within 18 months from the date of death of deceased employee.
5. It is also submitted by the management that, in the year 1998 the applicant Shri Ruplal Manjhi applied for employment in place of his father –in-law claiming himself as dependant son-in-law of the deceased employee. But during the life time the deceased employee has not informed the management that Shri Ruplal Manjhi is his dependant son-in-law, and the name of the applicant does not appear in any service record. The deceased employee never took any steps for inclusion of the name of his son-in-law as his dependant during his life time, in service records.
6. It is further submitted by the management that the Hon’ble High Court in catena of cases held that employment can not be claimed in favour of brother, widow daughter, widow daughter –in-law or son-in-law of the deceased employee as thy are not direct dependant of the deceased employee.
7. The short point to be decided in this case, is whether the applicant who said to be the dependant of the deceased workman will be entitled to the job, after the death of the workman. In this case BDO certificate and other documents filed by the applicant. But he has not come to the court to give any oral evidence what so ever. He has also not filed any service excerpt or any family tree to know that he is the only dependent of the deceased. It is also not known that his mother in law is alive or not. If she is alive her recomandation is also necessary. In the absence of that the applicant’s identity and dependany is not proved. Therefore this Tribunal is unable to give any relief in the absence of inadequate evidence.
8. Considering the facts and circumstance of the case, I hold that the demand of the Dhanbad colliery Karmchari sangh is not maintainable and Ruplal Manjhi is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 192/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/8/1994-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 192 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/8/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 192 of 1994

Employer in relation to the management of Ramkanali Colliery, M/s. BCCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer**Appearances :**

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry:-Coal

Dated 22/06/2016

AWARD

By order No. L-20012 /8/1994-IR(C-1) dated 28/07/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

Whether the action of the management of Ramkanali Colliery under Katras Area No. IV of M/s BCCL in dismissing Shri Bishwanath Mandal, Drillman w.e.f. 06/04/1991 is justified? If not, to what relief the concerned workman is entitled?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 56/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/482/2000-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 56 of 2001) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/482/2000-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of a Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 56 of 2001

Employers in relation to the management of Kustore area, M/s. BCCL

AND

Their workman

Present:- Shri Rajan Kumar Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri B.K. Mishra, Advocate

State : Jharkhand

Industry : Coal

Dated 28/06/2016

AWARD

By Order No.L-20012/482/2000-IR (C-I), dated 19/02/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“ क्या राष्ट्रीय कोलियरी मजदूर संघ की मांग कि भारत कोकिंग कोल लिमि० कुसटोर क्षेत्र के प्रबंधन द्वारा श्री आखिलेश्वर प्रसाद , सहायक फोरमैन को जुलाई 1982 से उक्त पद में नियमित किया जाए तथा काडर स्कीम के अनुसार वर्ष 1989 से उन्हें टेक्निकल ग्रेड 'ए' दिया जाए तथा 1.7.93 से ' फोरमैन' के पद पर पदोन्नत किया जाए नियमानुसार एवं न्यायोचित है ?

2. क्या यूनियन की मांग कि कर्मकार को जनवरी 1995 से 27-11-95 तक का बकाया वेतन दिया जाए उचित एवं न्याय संगत है ? यदि हाँ , तो कर्मकार किस राहत के पात्र हैं ?

2. The case is received from the Ministry of Labour on 08.03.2001. After receipt of reference , both parties are noticed. workman files their written statement on 06.09.2001. The management also files their written statement -cum-rejoinder on 23.05.2002. Thereafter rejoinder and document filed by the parties. Document of workman marked as W-1 to W-16 and one witness each examined from either side.

3. The case of the workman is that the concerned workman was appointed in Sudamdih Colliery in June 1970 as Mec. Fitter Helper under NCDC. Thereafter he was promoted as Fitter in Cat-iV and after that Cat-V in 1978.He was transferred to Basuria Collier thereafter at BTA.

4. It is also submitted that in 13.07.1982 he was authorized and engaged as Asstt. Foreman by order of Sr. Administrative Officer, BTA and he was worked on that post continuously because on Transfer of Sri S.N.Upadhyay Asstt. Forman continuously and completed 3 years service hence the concerned workman was entitled to be regularized as Asstt. Forman in T & S Grade "C" but after regular representation the management has not done so . Hence the concerned workman was entitled to get regularization w.e.f 1985
5. On the other hand , the case of the management is that the concerned workman was previously appointed at Katras Project as Mech. Fitter . He was transferred from Katras Project to Bhalgora Area and he was released from the service but he did not report for duty at Bhalgora Area immediately. After lapse of about 11 months he joined his duty in Bhalgora Project in Nov. 1995.
6. It is also submitted by the management that the concerned workman disobeyed the order of the management and did not join in Bhalgora immediately after his transfer from Katras Project Hence he is not entitled to any wages for the period of his idle period from January 1995 to Nov. 1995.
7. The concerned workman was not posted in Kustore /Bhalgora Area. Hence the dispute related to regularization as Asstt. Foreman on the basis of his work in the year 1982 is not correct..
8. It is also submitted by the management that , on the basis of the representation of the joint Committee , the concerned workman was promoted from Mech. Cat-V to Cat-VI w.e.f. 01.06.1989 and it was decided to consider his case of promotion as Asstt. Foreman as Techinal Grade-C through D.P.C as per the cadre Scheme of Company . The DPC considered the case of promotion of the concerned workman but he could not be promoted as Asstt. Foreman as he did not quality for promotion as par the norms fixed by the committee. Therefore the claim of the concerned workman for regularization in the grade of Asstt. Foreman from 1982 and further claim of Tec. Grade "A" from 1989 as per Cadre Scheme is baseless.
9. During the pendency of this case the concerned workman died and Smt Meena Devi w/o of concerned workman is substituted in this case.
10. The claim of the workman is promotion and regularization. The workman has admitted that he got promotion. He further claims benefits under Ext.W-4 . He says Ext-W-4 was not signed by the Competent authority. Author of ExtW-4 has already been dismissed. He further admits that, many senior above him have not been promoted . He has not stated regarding the DPC. Management said as the workman has not appeared for DPC, he was not promoted. Moreover the workman did not join at Kustore/Bhalgora Area. Hence the demand of wage of 11 month is not justified.
11. From the Cross examination of workman(WW-1) every thing will be clear. Which is quoted below:-

"It is a fact that in the year 1989. The management gave me promotion from Grade V to Grade VI . I worked in the promotional post. It is also a fact that in the year 2000 , I got promotion to Grade "C" and I worked in the said post. Ext-W-4 does not bear letter number or date . I am claiming here as per Ext-W-4 . The signatory of Ext W-4 has been dismissed. Before Ext-W-4 , there is no DPC for the said post. Then there were many senior to me.
12. This being the position, and considering the facts and circumstance of this case , I hold that the demand of RCMS from Kustore Area for regularization of Sri Akhileshwar Prasad as Asstt. Foreman as well as Tech. Grade A and promotion as Foreman is not justified, and he is not entitled to wages of 11 months. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 131/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/85/1999-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 131 of 1999) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/85/1999-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 131 of 1999

Employer in relation to the management of Baroda Area, M/s. BCCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry:-Coal

Dated 2016

AWARD

By order No. L-20012 /85/1999-IR(C-1) dated 04/06/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demands of the Union That Shri Hari Jena may be allowed pay Protection consequent upon his regularization w.e.f. 28/05/1991 as Helper Exev. Cate II and further allowed Scale / Pay equal to those of his Juniors w.e.f. 22/10/1996 consequent upon promotion as Fitter helper, Cat- E are justified? If so, to what relief the concerned worman is entitled?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears on behalf of the workman subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ.1521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसजेसीएमई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 58/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/51/1991-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref.

No. 58 of 1991) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. SJCME and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/51/1991-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of a Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 58 of 1991

Employers in relation to the management of M/s. Jagadamba Coke Manufacturing Enterprises

AND

Their workman

Present:- Shri Rajan Kumar Saran, Presiding officer

Appearances :

For the Employers : Shri U.N. Lall, Advocate

For the workman : Shri S.N. Ghosh, Advocate

State : Jharkhand

Industry:-Coal

Dated : 27/6/2016

AWARD

By Order No.L-20012/51/1991-IR (C-I), dated 29/05/1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of M/S Shree Jagadamba Coke Manufacturing Enterprises in terminating the services of Shri Dhurli Mahto, Bhatta Supply Mazdoor, w.e.f August 1990 is justified? If not to what relief the workman is entitled?”

2. The case is received from the Ministry of Labour on 18.06.1991. After receipt of reference , both parties are noticed. After long delay and after many adjournment workman files their written statement on 07.03.1994. The management files their written statement -cum-rejoinder on 21.09.1994. Thereafter document of management marked as M-1 to M-6/1 and one witness from each side has been examined.

3. The case of the workman is that the concerned workman was a permanent workman of M/S Jagadamba Hard Coke Manufacturing Enterprises and was working as Bhatta Supply Mazdoor for more than ten years. But without and reason the workman was prevented from coming and joining his duty w.e.f August 1990. He had been requesting the management to permit him to join duty but of any effect. Hence Industrial Dispute arose.

4. On the other hand the case of the management is that on 11.06.1990 at about 11 AM the concerned workman sitting idle at duty place, and after asking to perform duty he all on a sudden decline to perform his duties and abused the supervisor of company, and caught his shirt collar and started biting Then other workers separated him. Thereafter the workman left the work place.

5. It is also submitted by the management that enquiry was setup and after enquiry he is found guilty, then the concerned workman was dismissed.

6. The case is that the workman was dismissed from service as he assaulted his supervisor when the supervisor asked him to work while he was sitting inside mines in duty at duty hours. The enquiry held fair and proper, workman also found absent during enquiry.

7. Misbehavior is not at all tolerated in any workplace. Therefore the action of the management is justified. Tribunal is not inclined to interfere with the management decision.

8. Considering the facts and circumstances of this case, I hold that the action of the management of M/S Shree Jagadamba Coke Manufacturing Enterprises in terminating the services of Shri Dhurli Mahto, Bhatta Supply Mazdoor, w.e.f August 1990 is justified. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 115/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/116/1996-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 115 of 1997) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/116/1996-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 115 of 1997

Employer in relation to the management of Barora Area, M/s. BCCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri D. Mukharjee, Rep.

State : Jharkhand

Industry:-Coal

Dated : 21/6/2016

AWARD

By order No. L-20012 /116/1996-IR(C-1) dated 26/05/1997, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand raised by the Union in the year 1995 for the promotion of Sh. G. C. Lalla as Clerical Grade-I w.e.f. 01/04/1978, as Special Grade Clerk w.e.f. 13/11/1986 as Special Grade Clerk w.e.f.13.11.1986 and as Grade A w.e.f. 06/01/1992 is legal and justified? If so, to what relief is the concerned workman entitled?

2. This Case is received from the Ministry on 03.06.1997. During the pendency of the case concerned, The sponsoring Union representative submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence “No dispute” award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1523.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 229/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/208/1994-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 229 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/208/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 229 of 1994

Employer in relation to the management of M/s. CCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer**Appearances :**

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry:-Coal

Dated : 21/6/2016

AWARD

By order No. L-20012/208/1994-IR(C-1) dated 31/08/1994, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether workmen S/Shri Govind Munda, Kameshwar Parasad and Mithilesh Kumar Singh employed as Generator Operator w.e.f. 16/10/1991, 01/02/1991 and 19/10/1992 respectively through contractor M/S power engineers, Ratu Road, P.O- Hehal, District Ranchi at Jawahar nagar Colony of M/s Central Coalfields Ltd. Ranchi whose services were terminated w.e.f. 17. 08 . 1993 on the termination of contract by the contractor are entitled for regularisation and employment with the management of central coalfields ltd. Ranchi? If not, to what relief these workmen are entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates. Subsequently the workman does not appears. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ.1524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 26/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20012/424/2000-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 26 of 2001) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20012/424/2000-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 26 of 2001

Employers in relation to the management of Bastacolla Area, M/s. BCCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer

Appearances :

For the Employers : Shri U.N. Lall, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated 10/06/2016

AWARD

By order No. L-20012 /424/2000-IR(C-1) dated 25/01/2001, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“क्या राष्ट्रीय कोलियरी मजदूर संघ की मांग की बी. सी. सी. एल. , घानूडीह कोलियरी के कर्मकार श्री अरविंद प्रसाद सिंह का वेतन ग्रेड ‘बी’ एवं ग्रेड ‘सी’ में सर्वश्री एस. एन. पंडित एवं अजम्बर विरुली के समरूप निर्धारित किया जाए तथा उन्हें 10/04/1991 से ग्रेड ‘ए’ में पदोन्नत किया जाए उचित एवं न्याय संगत हैं ? यदि हाँ तो कर्मकार किस राहत के पात्र हैं ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2016

का.आ. 1525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 232/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-20025/3/1994-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 19th July, 2016

S.O. 1525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 232 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-20025/3/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

In the matter of Reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 232 of 1994

Employer in relation to the management of M/s. BCCL

AND

Their workman

Present:- Shri R. K. Saran, Presiding officer**Appearances :**

For the Employers : None

For the workman : None

State : Jharkhand

Industry:-Coal

Dated : 20/6/2016

AWARD

By order No. L-20025 /3/1994-IR(C-1) dated 31/08/1994, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s BCCL in dismissing Shri P.Madhaban Nair, Ex-cashier from service is justified, when the workman has been acquitted of the charges by the SD, JM Dhanbad vide their order dated 29/04/1992? If not, what relief is the above said workman entitled to? ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 170/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/329/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/329/98-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 27th June, 2016

Reference: (CGITA) No. 170/2004

The Branch Manager,
State Bank of India,
Shahalam gate Br. Shahalam,
Ahmedabad

...First Party

V/s

Shri Damodardas T. Tapodhan,
Bldg. No. 19, Narayan Colony, Gamkuva,
Danilimda, Ahmedabad

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/329/98-IR (B-I) dated 26.02.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India is justified in terminating/discontinuing the service of Shri Damodardas T. Tapodhan w.e.f. 22.04.1997 instead of paying him correct wages and regularising his service? If not, what relief the concerned workman is entitled to?”

1. The reference dates back to 26.02.1999. Second party submitted the statement of claim Ext. 3 on 10/22.09.1999. First party submitted the written statement Ext. 5 on 08.02.2000. The examination chief Ext. 12 of the second party was recorded on 14.09.2002. Since then, despite giving dozens of opportunities to the second party for his cross-examination, he did not turn up for cross-examination. Then lastly on 22.02.2016, second party was given last opportunity for cross-examination but again he did not turn up.

2. Thus, the reference is dismissed in non-prosecution of the case and also non-appearance of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्रा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 511/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/118/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 511/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of Saurashtra and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/118/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 28th June, 2016

Reference: (CGITA) No. 511/2004

The Manager,
State Bank of Saurashtra, Bhadra Branch, Bhadra,
Ahmedabad (Gujarat) – 38000

...First Party

V/s

Shri Kanubhai Babubhai Solanki,
4/119, Chanakyapuri, Ghatlodia,
Ahmedabad (Gujarat) – 38000

...Second Party

For the First Party : Advocates Meenaben Shah and Chalishazar

For the Second Party : Shri V.J. Patel

AWARD

The Government of India/Ministry of Labour, New Delhi vide reference adjudication Order No. L-12012/118/2002-IR (B-I) dated 21.08.2002 referred the dispute for adjudication to the Central Government Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the workman Shri Kanubhai Babubhai Solanki for reinstatement in service with full back wages is justified? If so, what relief the workman is entitled and what other directions are necessary in the matter?”

1. The brief facts of the reference are that the Second Party KanuBhaiSolanki vide his statement of claim Ex-7 stated that he had been working as peon under the employment of the First party, State Bank of Saurashtra His career was clean and blotless. He had never been with any show cause notice for any misconduct during last eight years. He

had been discharging the duties faithfully, diligently and honestly. He also completed 240 days of service in each year. On 24.08.2000 he has been performing his duties with First Party Bank. Suddenly on that day at about 1.30 PM he was asked by his senior officers of the Bank to go somewhere outside for official work where he met with an accident near the Bank premises. He was taken by the Bank's employees to V S Hospital in the injured condition for medical treatment as indoor patient. Where he underwent medical treatment for 10 days. Thereafter he was given medical treatment as outdoor patient for some time. After full recovery, he tried repeatedly to report for duty but he was denied to join the duty. Lastly on 1.10.2001 Branch Manager denied him to join the duty. He further submitted he served the Bank, First Party for more than 240 days in each last 8 preceding years. At the time of termination of his service junior employees were retained and after termination new employees were appointed the Bank. He was also not paid retrenchment compensation at the time of termination of his service. Thus Bank, First Party violated the provisions of the sections 25F, 25G and 25H of the Industrial Disputes Act and also the principles of Natural Justice. He further stated that he was provided any opportunity of hearing at the time of termination of his service to defend himself. Thus the action of the First Party Bank is improper, illegal and amounting to unfair labour practice. Therefore, he has prayed for reinstatement with full back wages.

2. The First Party vide his written statement Ex-17 denied the averments of statement of claim to the effect that second party served the First Party Bank for more than 240 days in each last eight preceding years. However it is not absolutely denied that second party met an accident near the First Party Bank's premises when he was sent by senior officers of the Bank for some official work. Some short of ignorance has been shown to this fact He was given appointment letter on 31.1.1994 in leave vacancy for 27 days from 1.2.1994 to 27.2.1994. It is further stated that he worked as daily wager for 209,143 and 132 days during the year 1995, 1996 and 1997 respectively. He was also work experience certificate to this effect. He was taken work on temporary basis as and when arises.

3. From the perusal of pleadings following issues arise:

- (a) Whether the second party served the First Party Bank for more than 240 days during last each 8 preceding years to his appointment?
- (b) Whether second party met an accident while on duty and was hospitalised for treatment?
- (c) Whether denial of regularisation of services amounts to violation of the provisions of the sections 25F, 25G and 25H of the Industrial Disputes Act?
- (d) Whether the demand of workmen for reinstatement with back wages is justified?

4. **Issue No. 1** Whether the second party served the First Party Bank for more than 240 days during last each 8 preceding years to his appointment?—The burden to prove this issue was on workman, second party. He in his statement on oath Ex-12 stated that he had been working as peon under the employment of the First party, State Bank of Saurashtra he used to do sweeping work in the Bank from 8AM TO 11AM and thereafter he used to do the peon's work. He was paid Rupees. 440 and Rupees 1500 for aforesaid works in the month. He also stated that he served the First Party Bank in the aforesaid manner for more than 240 days during last 8 preceding years. He further stated that on 24.08.2000 he has been performing his duties with First Party Bank. Suddenly on that day at about 1.30 PM he was asked by his senior officers of the Bank to go somewhere outside for official work where he met with an accident near the Bank premises. He was taken by the Bank's employees to V S Hospital in the injured condition for medical treatment as indoor patient. Where he underwent medical treatment for 10 days. Thereafter he was given medical treatment as outdoor patient for some time. After full recovery, he tried repeatedly to report for duty but he was denied to join the duty. Lastly on 1.10.2001 Branch Manager denied him to join the duty. But in his cross-examination he admitted that after accident he did not reported the Bank. He has also not stated that any junior workman was retained in service or in his place somebody was given appointment. He has filed the certificated issued by First party which reveals that he worked as daily wager for 209,143 and 132 days during the year 1995, 1996 and 1997 respectively. He was also work experience certificate to this effect. On behalf of First Party witness DhirajMakwana was examined who in his statement on oath Ex-31 supported the written statement but admitted that second party workman while on duty met an accident, he was hospitalised. But after recovery from the injuries he did report to the Bank for duty. Thus the whole evidence reveals that second party did not work for more than 240 days during last each preceding 8 years. Thus this issue is decided in negative and against second party.

5. **Issue No. 2** Whether second party met an accident while on duty and was hospitalised for treatment? Second party workman in his statement on oath stated that suddenly on that day at about 1.30 PM he was asked by his senior officers of the Bank to go somewhere outside for official work where he met with an accident near the Bank premises. He was taken by the Bank's employees to V S Hospital in the injured condition for medical treatment as indoor patient. Where he underwent medical treatment for 10 days. Thereafter he was given medical treatment as outdoor patient for some time. After full recovery, he tried repeatedly to report for duty but he was denied to join the duty. Lastly on 1.10.2001 Branch Manager denied him to join the duty. This fact has been admitted by DhirajMakwana in his statement on oath Ex-31. Thus this issue is decided in affirmative in the favour of second party, workman. But no relief

can be granted on this basis as this comes under Workmen's Compensation Act and for that there is separate forum and this Tribunal has no jurisdiction to adjudicate under Workmen's Compensation Act.

6. **Issue No.3** Whether the denial of regularisation of service amounts to violation of the provisions of the sections 25F, 25G and 25H of the Industrial Disputes Act? This issue is also inter-related to issue no1.

The Advocate for First party has filed written argument referring M.P.Housing Board and another v/s Manoj Srivastava, 2006 SCC (L&S) 422 that a daily wager does not hold a post or derive any legal right in relation thereto, unless he has been appointed against a duly sanctioned vacant post and also upon following the due procedure of appointment.

He also argued relying on Nand Kumar v/s State of Bihar and others, (2014) 2 Supreme Court Cases (L&S) 171, that daily wagers are never appointed are always appointed following the proper procedure and consequences are always remain in their mind or knowledge, therefore, they/daily wager cannot invoke the theory of legitimate expectation for being confirmed on the said post.

Further he argued that the judgement in Range Forest Officer v/s S.T.Hadimani (2002) 2 LLJ 1053 has been wrongly interpreted by the second party's counsel because in that case Apex Court has held that mere filing of affidavit on the point of working for 240 days will not be sufficient evidence to show of completion of evidence as in his own statement workman or daily wager has to lead evidence to prove this fact which has not been proved by the second party.

He further argued that in Delhi Cloth and General Mills Company Ltd v/s Their Workmen, 1967 1 LLJ 428 The tribunal cannot widen the scope of enquiry beyond the terms of reference.

On the basis of the arguments he argued that reference has no force and liable be dismissed.

Contrary to the arguments of first party, learned Counsel of the second party referred Senior Superintendent Telegraph v/s Santosh Kumar Seal, 2010 GLHEL-SC 48285 wherein it been held,

"in a recent judgement authored by one of Us (R.M.Lodha J) in the case of Jagbir Singh v/s Haryana State Agriculture Marketing Board, 92009) 15 SCC 327 the aforesaid decisions were noted and it was stated,

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position in long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the procedure. Compensation instead of reinstatement has been held to meet the ends of justice. It would be thus, seen that by a catena of decisions in recent time, this court has clearly laid down that an order of retrenchment passed in violation of section 25 F although may be set aside but an award of reinstatement should not, however be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would sub serve the end of justice."

Here it would be necessary to reproduce the provisions of section 25B, 25F, 25G and 25H of the Industrial Disputes Act, which are reproduced as below:--

Section 25F provides for Conditions precedent to retrenchment of workmen as under: No workman employed in any industry who has been in continuous service for not less one year under an employer shall be retrenched by that employer until---

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice;
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Section 25 G provides for Procedure for Retrenchment--- Where any workman in any industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and workman in this behalf, the employer shall ordinarily retrench the workman who shall be last person to be employed in that category, unless for reasons to be recorded the employer retrenches any workman.

Section 25 H Re-employment of retrenched workman—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workman who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

Thus the aforesaid provisions provides the protection only to those workman who are workmen within the definition of **Section 2(s) of the Industrial Disputes Act** which provides as under “Workman” means any person (including any apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or award, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to any industrial dispute, includes any such persons who has been dismissed, discharged or retrenched in connection with , or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person---

- (i) Who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1950; or
- (ii) Who is employed in the Police Service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

7. **Section 25 B** provides as who 9 workman will be treated in continuous service for the purpose of this Chapter i.e. Strikes and Lockouts.

Section 25 B. Definition of continuous service. ---For the purpose of this chapter,---

- (1) A workman shall be said to be in continuous service for a period if he is, for that period, in interrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of workman;
- (2) Where a workman is not in continuous within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer---
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than ---
 - (i) One hundred and ninety days in the case of workman employed below ground in a mine; and
 - (ii) Two hundred and forty days in any other case;
 - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than---
 - (i) ninety five days, in the case of workman employed below the ground in a mine; and
 - (ii) one hundred and twenty days, in any other case.

Explanation. ---- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which---

- (i) He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) He has been on leave with full wages, earned to the previous years;

- (iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of employment; and
- (iv) In the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

These aforesaid provisions in Industrial Disputes Act make it very clear that in the case of second party workman these provisions of Section 25 G and 25 H are violated because after termination he was not given opportunity re-employment despite the fact that number of persons were employed after his termination.

But the second party workman in this case had been working since last more than four years as appears from the documents filed by both the parties. In the year 1995, 1996, 1997 and 1998 he worked for 209, 143, 132 and 27 days. He met an accident while on duty. He was not attended by the First Party for the purpose of medical treatment, as discussed earlier. He was not given work as daily wage after recovery of injuries sustained by him and appears to have not been given appointment as daily wage as partly physically disabled while first party gave appointment as daily wages to others who were definitely junior to him. Thus in this case the provisions of section 25G AND H are violated. Thus this issue is decided accordingly. Thus it would be equitable to ask First Party Bank to pay equitable monetary compensation to the second party.

8. Whether the demand of workmen for reinstatement with back wages is justified? In the light of the aforesaid discussion demand of workmen for reinstatement with back wages is not justified and cannot be awarded in this reference.

9. However, it is proved that second party workman met an accident and sustained serious injuries causing fracture of right leg of his body while on duty or serving the First Party Bank as he being orderly peon was ordered by senior Bank's to go somewhere outside the Bank premises for work which he was supposed to obey. This is common sense and equity for the employer too to provide medical aid and treatment as well to his employee whether temporary, permanent or daily wage. The provisions of Workmen's Compensation Act also put the employer under a duty to pay or compensate his employee who has sustained bodily injuries while working/ serving the employer. Though second party workman has neither pleaded it in his statement of claim nor has stated in his statement on oath as to how much he incurred the loss or money on his treatment. But he has stated in his statement on oath that he sustained injuries to the extent of fracture of right leg. He had been hospitalised for 10 days. Surgery was also done. He had also been put for outdoor medical treatment for three months. It can also be assumed that said injury made him so crippled that First Party Bank, employer by implication refused him job of daily wage which might have made him regular employee. Therefore, in the said circumstances of the case, second party workman being retrenched in violation of Section 25 G and H Industrial Disputes Act ought to be compensated for Rupees one lac as a token compensation for his employment dues including medical treatment.

10. This is the award passed by the Tribunal and thus the reference is decided accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 839/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-41012/266/2003-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1528.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 839/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 12.07.2016.

[No. L-41012/266/2003-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 28th June, 2016

Reference: (CGITA) No. 839/2004

1. The Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda – 390004.
 2. The General Manager,
Western Railway,
Churchgate, Mumbai
- ...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole Kothi,
Baroda – 390001

...Second Party

For the First Party : None
For the Second Party : Shri H.D. Kathrotiya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/266/2003-IR (B-I) dated 08.03.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Union for fixing the seniority of Shri Mekwan Joseph Simon properly and to grant promotion to him as ‘Electrical Khalasi’ from the date of eligibility i.e. from 1989 is legal, proper and justified? If so, to what relief the concerned workman Shri Mekwan Joseph Simon is entitled to and from which date?”

1. The reference dates back to 08.03.2004. The second party submitted the vakalatpatra Ext. 5 and statement of claim Ext.6 on 27.11.2006. The first party also submitted the vakalatpatra Ext. 3 on 09.06.2004 but since then first party did not file the written statement. Both the parties have been absent since 26.11.2012. On 22.02.2016, despite the aforesaid facts the reference was ordered to proceed ex parte against the first party but today second party did not appear to lead his evidence. Therefore, the case is fit to be dismissed in non-prosecution of the case by the second party. Thus, this tribunal has no option but to dismiss the reference in non-prosecution by the second party.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 71/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-41012/28/2007-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1529.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 12.07.2016.

[No. L-41012/28/2007-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 27th June, 2016**Reference: (CGITA) No. 71/2007**

The Divisional Railway Manager,
Western Railway, Kalupur Railwaypura,
Ahmedabad (Gujarat)

...First Party

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
E/209, Sarvottamnagar, New Railway Colony,
Sabarmati, Ahmedabad

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/28/2007-IR (B-I) dated 27.07.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of the Union for cancellation of transfer order dated 14.09.2004 in respect of Shri Shailendra Singh R.ELF Grade-III from Ahmedabad to Gandhidham, is legal, proper and justified? If so, to what relief the concerned workman is entitled?”

1. The reference dates back to 27.07.2007. Both the parties were served. The second party submitted the statement of claim Ext. 7 on 29.07.2010. First party submitted written statement Ext. 9 on 22.09.2011. The application Ext. 10 and Ext. 11 has been moved by the first party informing that second party's workman has expired on 20.04.2010. Therefore, case has been abate.
2. It is noteworthy that the legal heirs of the workman second party have not moved any application for substitution of the legal heirs.
3. Thus, the reference is dismissed as abate.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1530.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 148/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/123/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 148/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/123/98-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 28th June, 2016

Reference: (CGITA) No. 148/2004

1. The Chief General Manager,
State Bank of India, L.H.O.,
Bhadra, Ahmedabad (Gujarat) – 380001.
2. The Regional Manager,
S.B.I., Regional Office,
Ambawadi, Ahmedabad – 380001.
3. The Branch Manager,
S.B.I., Pragati Nagar Branch,
Nr. Ankur Bus Stand, Nr. Jain Derasar, Ankur,
Ahmedabad – 380001

...First Party

V/s

Mrs. Dhirajben R. Kadia,
38, Alka Part Society, Haribhai, Ni-wadi, Jaivrajpark,
Ahmedabad (Gujarat)

...Second Party

For the First Party : Shri K.I. Oza & Shri B.K. Oza

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/123/98-IR (B-I) dated 06.01.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India in terminating/discontinuing the services of Smt. Dhirajben R. Kadia w.e.f. 12.04.1997 instead of regularising her services and not paying wages half of the time-scale for the period she has worked as sweeper and cleaner on daily wages, is justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 06.01.1999. The second party submitted the statement of claim Ext. 4 on 06.10.1999. First party submitted the vakalatpatra Ext. 3 of his advocate Shri B.K. Oza on 07.04.1999 and also submitted the written statement Ext. 5 on 06.10.1999. Since then, second party did not prefer to lead evidence. Therefore, a last opportunity was given to second party for leading evidence on 01.03.2016. Shri B.K. Oza learned counsel for the first party moved an application Ext. 16 for closure of the evidence of the second party.
2. As second party has not been sincere in the prosecution of the case. Therefore, this tribunal has no option but to close the evidence of the second party and dismissed the reference in non-prosecution of the case by the second party.
3. The case is dismissed in non-prosecution of the reference by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 142/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/6/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1531.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of ONGC Ltd. and their workmen, received by the Central Government on 12.07.2016.

[No. L-30012/6/98-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 20th June, 2016

Reference: (CGITA) No. 142/2004

The Group General Manager(Project) / IRS,

ONGC Ltd.,
AvaniBhavan, 5th Floor, Chandkheda,
Sabarmati, Ahmedabad (Gujarat)

... First Party

Vs.

Their Workmen,
Through The General Secretary,
Gujarat Petroleum Employees Union,
434-46, Gandhivas, Koba Road,
Sabarmati, Ahmedabad (Gujarat)

... Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : -----

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/6/98-IR(B-I) dated 18.12.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether to give Rs. 3500/- per driver for their Uniform, Helmat, Security shoes and Security kit to each driver which are appointed by the contractors of the management, as per the demand of Gujarat Petroleum Employees Union (list of drivers copy enclosed), is legal and justified? If so then what relief, the workmen are entitled to?”

1. This Reference dates back to 18.12.1998. Both the parties filed the Vakalatpatra of their respective advocates. Second party also filed the statement of claim Ext. 4 on 12.10.1999 and first party submitted the written statement Ext. 7 on 14.06.2000. Since then, second party did not prefer to give his evidence despite giving dozen of opportunities. The advocate Smt. Santoshben Shah representing the second party give in writing that the demands raised by the union are already satisfied. Union does not press the matter and the reference be disposed off.
2. Thus, the reference is disposed off as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 282/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/460/99-आईआर (बी-I)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/460/99-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 20th June, 2016

Reference: (CGITA) No. 282/2004

The Zonal Manager,
State Bank of India, C.N. Vidhyalaya Complex,
Ahmedabad (Gujarat) – 380015

...First Party

v/s

Shri Rajesh Khemchandbhai Solanki,
Behind V.S. Hospital, Kacha Chhapara,
Ellisbridge, Ahmedabad (Gujarat) – 380006

...Second Party

For the First Party : Shri D.C. Gandhi, Advocate
 For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/460/99-IR(B-I) dated 24.03.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India in engaging Shri Rajesh Khemchandbhai Solanki on repeated appointment letters for 30 days during the period from 07.10.1997 to June, 1998 and thereafter orally terminating the service of the concerned person w.e.f. 01.07.1998 without any notice or compensation is legal and justified? If not then to what relief the concerned workman is entitled to?”

1. The reference dates back to 24.03.2000. Both the parties submitted the Vakalatatpatra Ext. 4 & Ext. 5 of their respective advocates on 08.06.2000 and 20.11.2000. Second party submitted the statement of claim Ext. 6 on 25.01.2001. First party, State Bank of India also filed the written statement Ext. 13 on 27.03.2004. But second party, since then, did not prefer to give his evidence. Thus it appears that second party is not willing to prosecute/proceed with the reference.

2. Thus, in the light of the above, the reference is dismissed in non-prosecution of the reference by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1533.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 96/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-41012/212/97-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1533.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 12.07.2016.

[No. L-41012/212/97-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
 AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
 Presiding Officer, CGIT-cum-Labour Court,
 Ahmedabad,

Dated 27th June, 2016

Reference: (CGITA) No. 96/2004

1. The General Manager,
Western Railway, Churchgate, Mumbai
2. The Workshop Manager (Loco),
Western Railway, Freeland Gunj, Dahod, Panchmahal,
Gujarat – 398151
3. The Chief Workshop Engineer,
Western Railway, Head Quarter Office, Churchgate,
Mumbai

...First Party

v/s

Shri Bipin Chandra P. Khalasi,
C/o J.K. Ved, Sinduri Mata Devasthan,
S.T. Nagar Road, P.O. – Godhra,
Panchmahal (Gujarat) – 398151

...Second Party

For the First Party : Shri H.B. Shah

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/212/97-IR (B-I) dated 30.04.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Chief Workshop Manager, Western Railway, Dahod in terminating the services of Shri Bipinchandra Pal Khalasi Loco Workshop Dahod with effect from 26.08.1995 on misconduct vide chargesheet No. E/308/16743/GP/DAR dated 29.09.1994 is legal and justified? If not to what relief the concerned workman is entitled to?”

1. The reference dates back to 30.04.1998. Second party submitted the statement of claim Ext. 3 on 29.09.1998. First party also filed the written statement Ext. 6 on 28.04.1999. Second party also filed his affidavit-cum-examination Chief Ext. 12 on 10.04.2005 but has not been turning up for cross-examination by the second party.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1534.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 97/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-41011/32/97-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1534.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 12.07.2016.

[No. L-41011/32/97-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 27th June, 2016

Reference: (CGITA) No. 97/2004

1. The General Manager,
Western Railway, Churchgate, Mumbai - 400001
2. The Chief Workshop Engineer,
Western Railway, Loco Workshop,
Dahod (Gujarat) – 389151

...First Party

V/s

The Secretary,
Paschim Railway Karmachari Parishad,
Devdatt Pathak, Navrang Society,
Dahod – 38915

...Second Party

For the First Party : Shri Bipin D. Thakar

For the Second Party : Shri B.K. Sharma

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/32/97-IR (B-I) dated 06.07.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Loco Workshop, Dahod (Gujarat) in denying Tribal allowance to its 2500 employees and paying the same to certain cadre of employees only at Dahod workshop is legal and justified. If not to what relief the concerned employees are entitled to and from which date?”

1. The reference dates back to 06.07.1998. Second party submitted the statement of claim on 05.04.1999 and first party also filed written statement Ext. 8 on 09.09.2001. First party also filed the No. of documents. Since then, second party has not been leading any evidence and has also been absent.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 147/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/122/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1535.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/122/98-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 27th June, 2016

Reference: (CGITA) No. 147/2004

1. The Branch Manager,
State Bank of India,
Shahalam gate Br. Shahalam,
Ahmedabad – 380001
2. The Chief General Manager,
State Bank of India, Local Head Office,
Lal Darwaja, Ahmedabad – 380001

...First Party

V/s

Shri Ishwarlal R.
D-63, Maya Rohidas Society,
Near Kashi Vishwanath Part -1,
Next to Mahavir School, Isanpur,
Ahmedabad – 382423

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/122/98-IR (B-I) dated 06.01.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management in terminating the services of Shri Ishwarlal R. Makwana by the management of State Bank of India w.e.f.30.09.1996 is justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 06.01.1999. The second party submitted the statement of claim Ext. 5 on 06.02.1999 and first party also submitted the written statement Ext. 9 on 16.02.2000. Thereafter both the parties filed the No. of documents, lastly on 21.11.2000 by second party. Since then, second party did not prefer to lead evidence. Then lastly on 22.02.2016, second party was given last opportunity for cross-examination but again he did not turn up.
2. Thus, the reference is dismissed in non-prosecution of the case and also non-appearance of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1536.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 510/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/49/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 510/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 12.07.2016.

[No. L-12012/49/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 20th June, 2016

Reference: (CGITA) No. 510/2004

1. The Circle Development Officer,
State Bank of India, Bhadra,
Ahmedabad (Gujarat) – 380001.
2. The Branch Manager,
State Bank of India, Patan Branch,
Patan (Gujarat)

...First Party

v/s

Shri Nathabhai C. Makwana,
C/o Sh. Nalin U. Bhatt, Bhadra,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri D.C. Gandhi, Advocate

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/49/2002-IR(B-I) dated 19.08.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of State Bank of India in discontinuing the services of Shri Praveen Nathabhai Bhavsar w.e.f. 13.07.2001 is justified? If not, what relief the concerned workman is entitled?”

1. The reference dates back to 19.08.2002. Both the parties submitted the Vakalatatpatra Ext. 4 and Ext. 5 of their respective advocates on 03.02.2003 and 20.11.2002. Second party submitted the statement of claim Ext. 6 on 03.02.2003. First party, State Bank of India also filed the written statement Ext. 9 on 17.11.2003. But second party, since then, did not prefer to give his evidence. Thus it appears that second party is not willing to prosecute/proceed with the reference.

2. Thus, in the light of the above, the reference is dismissed in non-prosecution of the reference by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1537.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 205/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/74/1998-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1537.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 205/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the management of M/s. ONGC and their workmen, received by the Central Government on 20.07.2016.

[No. L-30012/74/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 27th June, 2016

Reference: (CGITA) No. 205/2004

The Group General Manager (P),
ONGC Ltd., K.D.M. Bhawan,
Mehsana (Gujarat) – 380001

...First Party

V/s

The Secretary,
ONGC Employees Union,
8, Samarpan Shopping Complex,
Highway Road, Mehsana – 384002

...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/74/98-IR (C-I) (dated nil) referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the ONGC Employees Union for to promote Shri ChamanlalPoptatlal in the salary grade of Supervisor (H.B. Class - II) from 01.01.1993 is legal, proper and just? If yes, to what relief the concerned workman is entitled?”

1. Second party submitted the statement of claim Ext. 4 on 26.10.1999. First party filed the written statement Ext. 7 on 24.08.2001. Since then, the second party has not been leading evidence.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 249/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/105/1997-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1538.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 249/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the management of M/s. ONGC and their workmen, received by the Central Government on 20.07.2016.

[No. L-30012/105/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 28th June, 2016**Reference: (CGITA) No. 249/2004**

The Group General Manager (P),
ONGC Ltd., Mehsana Project, K.D.M. Bhawan,
Palvasana, Mehsana (Gujarat) – 380001

...First Party

V/s

The General Secretary,
Gujarat Petroleum Employees Union, 434/46,
Gandhivas Koba Road, Sabarmati,
Ahmedabad (Gujarat) – 380005

...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Kum. Santoshben

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/105/97-IR (C-I) dated 25.10.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of Gujarat Petroleum Employees Union for to reinstate in services of Shri Bhikhabhai M. Goswami on the post of Typist and Clerk from dated 01.07.1996 in ONGC, Mehsana Project and also approved him exact and regular status from same date, is legal and justified? If yes, to what relief the concerned workman is entitled?”

1. The reference dates back to 25.10.1999. The second party submitted the statement of claim Ext. 3 on 29.03.2000. First party also filed written statement Ext. 4 on 04.10.2000. The case was fixed for leading evidence by second party on 12.08.2011 but since then the second party has been absent and also has failed to lead evidence. Thus, this tribunal has no option but to dismiss the reference in non-prosecution by the second party.

2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1539.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओएनजीसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 177/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/146/1998-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th July, 2016

S.O. 1539 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 177/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the management of M/s. ONGC and their workmen, received by the Central Government on 20.07.2016.

[No. L-30012/146/1998-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 22nd June, 2016

Reference: (CGITA) No. 177/2004

The Executive Director,
ONGC Ltd., Western Region, Makarpura Road,
Baroda(Gujarat) – 390009

...First Party

v/s

The General Secretary,
ONGC Employees Union,
8, Samarpan Shopping Complex, Highway,
Mehsana(Gujarat) – 384002

...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Shri A.S. Kapoor

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/146/98-IR(C-I) dated 15.03.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the demand of ONGC Employees Union in asking promotion of Shri J. H. Choudhary to the post of Khalasi Gr. I upgraded in the pay scale of Rs. 2532/- w.e.f. 01.01.1993 with all consequential benefits is justified? If yes, what relief the workman is entitled?”

The reference dates back to 15.03.1999. Second party submitted the statement of claim Ext. 4 on 09.12.1999. First party also submitted the written statement on 10.10.2000. Since then, the second party has been absent and has

also not been leading evidence. Thus, it appears that second party has no willingness to prosecute his case. Therefore, the tribunal has no option but to dismiss the reference in default of the second party.

Thus, the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1540.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 13/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/206/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 21.07.2016.

[No. L-12012/206/2004-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/13/2005

Shri Nobert Anthony,
C/o Mrs. Celina Devi,
Geetanjali Colony, House No.105, Sector-I,
Suklu Dhana,
Chhindwara (MP)

...Workman

Versus

General Manager,(Personnel),
Union Bank of India,
Industrial Relations Department, Central Office,
Union Bank Bhawan, 239, Vidhan Bhavan Marg,
Mumbai

...Management

AWARD

Passed on this 27th day of June 2016

1. As per letter dated 19-1-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/206/2004-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Union Bank of India, Central Office4, Mumbai in dismissing Shri Nobert Anthony Head Cashier, Parasias Branch, Distt. Chhindwara MP from service from 29-9-97 vide chargesheet dated 2-12-96 is legal and justified? If not, to what relief the workman concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/18. Case of Ist party workman is that Government has referred dispute pertaining to his dismissal from service from 29-9-97. He had submitted representation dated 8-1-02 contending that a breach of settlement is punishable under Article 29 of ID Act. That he was working as Head Cashier in District Sidhi during 1993-94. He was also deputed to Saroundha branch. During deputation, he was assigned duties at Deosar branch. Blindly believing and without

verifying the veracity of a complaint, he was placed under suspension on 10-10-96. Chargesheet was issued to him on 10-1-97 alleging fraudulent withdrawal of amount Rs. 4000 on 19-11-93, Rs.8000 on 16-12-93, Rs.6500 on 26-12-93 & Rs.6500 on 10-1-94 by cheque. The charges alleged against him are of minor and gross misconduct. However chargesheet was issued to him w.r.t. doing act prejudicial to the interest of Banks and individuals involving serious loss. That order of his suspension dated 23-9-96 was issued by some one whose name, designation or rank were not as Disciplinary Authority. Chargesheet was issued by other person whose name, designation or rank were not disclosed as Disciplinary Authority. Memorandum dated 2-1-97 was also similarly issued. Those matters goes to the root of the matter. Memorandum issued by Dy.Manager (Industrial Relations) Shri G.V.Joshi Presenting Officer who was appointed as Enquiry Officer as well as Disciplinary Authority. His appointment as Disciplinary Authority and Enquiry Officer are contradictory. Workman relies on staff circular No. 2309 dated 20-5-81. Bipartite settlement dated 19-10-66 was modified by Bipartite settlement dated 22-11-79. Schedule showing office establishment by Disciplinary Authority and Appellate authorities for the purpose of Disciplinary action. In any case, there cannot be numerous Disciplinary and Appellate Authorities either for an establishment or for an employee because such a chaotic dispensation would defeat the very purpose of nomination and notification of such authorities by designation. The last para of the chargesheet reading, Disciplinary action including holding of a departmental enquiry will be conducted by another Disciplinary Authority Shri G.V.Joshi, Personnel Officer, Regional Office, Rewa corroborates the facts that for every employee there were several players for the role of Disciplinary Authority. Appointment of Shri G.V.Joshi was therefore highly irregular and illegal. Ist party workman reiterated that he had not committed any misconduct alleged against him. The charges alleged against him were not proved. The allegation that he had nexus to all withdrawals and committed act of omission are based on surmises and conjectures. There is no evidence to prove the charges. The Ist party has also made various comments about evidence of management's witnesses. That departmental action was initiated against Shri S.K.Sethia Branch Manager, clerk cum cashier. Shri Sethi and many others were also placed under suspension were subsequently reinstated.

3. Ist party workman further contends that he was not given opportunity to submit representation w.r.t. Enquiry Report, showcause notice was not issued to him. He was not given time for his submissions w.r.t. proposed punishments. That Enquiry Officer/ Disciplinary Authority Shri G.V.Joshi had already concluded that the charges of gross misconduct and minor misconduct were proved and predetermined to impose penalty of dismissal. Workman had challenged order of his dismissal filing appeal. Workman was granted personal hearing after 2 ½ years at Mumbai. Workman had complied with the directions. However his appeal was rejected vide order dated 6-11-2000. Workman reiterates that enquiry conducted against him is illegal. Principles of natural justice were not followed. The powers of Disciplinary Authority could not be delegated. In departmental proceeding initiated against him in violation of clause 19.11, 12(C), 19(4) of Bipartite settlement. Workman claims to be innocent. chargesheet issued against him was based on presumption w.r.t. amount withdrawn. Management's witnesses were not produced for cross-examination by him. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed exhaustive Written Statement at Page 6/1 to 6/23 opposing claim of workman. 2nd party submits that the contentions of workman in statement of claim are false, fabricated, not tenable in law. That Ist party workman was dismissed for proved fraudulent withdrawals of amount forging signatures of Account Holder No. 390. The act committed by Ist party workman amounts to gross misconduct as per Bipartite Settlement. The said act is prejudicial to the interest of Bank involving negligence of workman. That 2nd party is carrying banking business. Employee working in the Bank is required to work with absolute devotion, integrity, honesty. Looking to the circumstances, Government should not have referred the dispute.

5. 2nd party further contends that workman was initially recruited as clerk cum typist on 20-12-86 at Sidhi branch. After serving in said branch, he was given higher assignment on post of Head Cashier Cat-C from 20-6-89 at Devsar branch. Workman worked in Devsar branch till 30-5-94, he was transferred to Parasia branch where he worked from 1-6-94 to 10-10-96. Workman was dismissed for proved misconduct holding enquiry. Workman committed act prejudicial to the interest of the Bank and negligence in the duty. Amount from SB Account No. 390 of Malti Singh were illegally withdrawn. Workman was suspended as per order dated 23-9-96. Chargesheet was issued to him on 2-12-96. Personnel Officer was appointed as Enquiry Officer. As per staff circular No. 2309 dated 20-5-81, norms of Disciplinary Authority were vested with Shri Joshi, Presenting Officer. That Shri A.K.Ajmera was appointed as Management Representative. Enquiry was conducted, statement of witnesses were recorded and cross-examined. Workman was allowed personal hearing. Workman had preferred appeal challenging order of his dismissal. It is reiterated that the dismissal of workman is proper and legal. Enquiry was conducted against workman following principles of natural justice. 2nd party submits that workman is not entitled to any relief.

6. Ist party workman filed rejoinder at Page 7/1 to 7/3 reiterating his contentions in statement of claim.

7. After recording evidence of the parties and hearing argument, enquiry conducted against workman was found illegal as per order dated 13-5-14 mainly on the ground that Enquiry Officer Shri G.V.Joshi himself acted as Disciplinary Authority.

8. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether 2 nd party proves charges alleged against workman?	In Negative
(ii) Whether the action of the management of Union Bank of India, Central Office, Mumbai in dismissing Shri Nobert Anthony Head Cashier, Parasia Branch, Distt. Chhindwara MP from service from 29-9-97 vide chargesheet dated 2-12-96 is legal and justified?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order

REASONS

9. Point No.1- Vide order dated 13-5-2014, enquiry conducted against workman was found vitiated and illegal. 2nd party was granted permission to prove misconduct alleged against workman. Management has filed affidavit of evidence of witness Shri Purushottam. His affidavit of evidence is devoted on the aspect Ist party was posted as Head Cashier at Devsar branch, order of suspension was issued to him. Chargesheet was issued to him, Shri G.V.Joshi was appointed as Enquiry Officer. Workman was granted opportunity for his defence. Punishment of dismissal was imposed against him. That workman is not entitled to any relief. The affidavit of his evidence is only narration of the proceeding of the enquiry about how the enquiry was conducted. The affidavit of evidence of management's witness is absolutely silent about the fraudulent withdrawal of amount from Account No. 390 held by Account Holder. His affidavit of evidence doesnot disclose his knowledge about the manner the amount was fraudulently withdrawn. In his cross-examination, management witness says he had not seen original of Certificate Exhibit M-3 w.r.t. withdrawal of amount from Saving Account No. 390 that chargesheet was issued to Branch Manager Shri S.K.Sethia. he was unable to tell whether chargesheet was issued to Shri S.C.Punia. he claims ignorance in what regard chargesheet was issued to him himself. As per rules, check book remains in custody of the Branch Manager. Any other witness is not examined by management to prove the charges alleged against workman. For sake of convenience, I may refer to the charges alleged against workman. In Exhibit W-3, the amount of Rs.4000 withdrawn on 19-11-93, Rs.8000 on 16-12-93, Rs.6500 on 26-12-93, Rs.6500 on 0-1-94 withdrawn by cheque from SB Account of Malti Singh. Affidavit of evidence of management's witness is absolutely silent about these facts.

10. Workman filed affidavit of his evidence denying charges alleged against him. In his cross examination, workman says he had not admitted charges of fraud during Enquiry Proceedings. After dismissal from service, he is unemployed. The evidence on record cannot prove the charges alleged against workman. Therefore I record my finding in Point No.1 in Negative.

11. Point No.2: In view of my finding in Point No.1 charges alleged against workman are not proved from evidence, punishment of dismissal imposed against workman cannot be sustained. Therefore I record my finding in Point No.2 in Negative.

12. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) Order of punishment of dismissal imposed against workman is set aside. 2nd party is directed to reinstate workman with continuity of service and full back wages.

Amount of back wages shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1541.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 58/08) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12011/58/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1541.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/08) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 21.07.2016.

[No. L-12011/58/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/08

General Secretary,
Anusuchit Jaati Karamchari Kalyan Parishad,
F-1, Karambhoomi, Tripti Vihar,
Indore Road, Ujjain(MP)

... Workman/Union

Versus

Zonal Manager,
Bank of India, Zonal Office,
18, Shanku Marg,
Freeganj, Ujjain (MP)

...Management

AWARD

Passed on this 21st day of June 2016

1. As per letter dated 17-3-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/58/2007-IR(B-II). The dispute under reference relates to:

“Whether the claim of the Union that Shri Bahadur Sakrati has completed 240 days of service in a calendar year is legal and justified? If so, whether the action of the management of Bank of India in terminating his services w.e.f. 3-7-05 without following the provisions of Section 25-F of the Industrial Dispute Act, 1947 is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1to 3/4. Case of Ist party workman is that he was engaged on daily wages on vacant post of peon from April 99. He was engaged for providing drinking water. That he was continuously working after the initial engagement. He was paid Rs.5/- wages per day. Wages were increased to Rs.30. he was paid Rs.15 for filling water, Rs.30/60 for rendering work of employees on leave. He was working from Monday to Saturday six days in a week. Sunday was holiday. He was not paid wages for National Holidays. He completed more than 240 days during each of the calendar year. His services were terminated on 3-7-05 without notice, retrenchment compensation was not paid to him. After the dispute was raised and conciliation failed, the dispute is referred. Workman claims to be covered as employee under Section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. Policy of last come first go was not followed. Thereby 2nd party violated Section 25 G, N of ID Act. After termination of his services on 3-7-05, 2nd party engaged other persons. Workman was not engaged. Thereby 2nd party violated Section 25 H of ID Act. On such contentions, workman prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7.1 to 7/5 opposing claim of workman. 2nd party submits that term of reference is highly prejudicial, the reference is not tenable. Ist party workman was never engaged or employed by the Bank. Provisions of ID Act are not applicable. The order of reference is vague. Particulars regarding engagement of workman are not given. Relationship of employer employee doesnot exist between management and workman. The dispute has been raised by General Secretary of Union. Said Union has no locus standi to raise the dispute. Ist party workman is not member of alleged Union. Union is not in existence. Ist party is not covered under section 2(s) of ID Act. On such ground, it is submitted that order of reference is not legal.

4. 2nd party further submits that dispute raised by Ist party workman claiming reinstatement and other benefits alleging termination of his service in violation of ID Act. That the appointments in the Bank is covered by statutory

rules and regulations. Ist party workman was not engaged following recruitment rules, his name was not sponsored through Employment exchange. Branch Manager has no power to appoint. The reservation policy for SC/ST OBC is binding on the management while making appointments. Bank employment is public employment covered under Article 16 of the constitution. For such employment, employment exchange is only agency where any person can register himself and registration in Employment Exchange guarantees equality for appointment. The policy of Government of India cannot be ignored or deleted. Payment of wages made to persons engaged on casual basis, daily wages intermittently in absence of regular sub staff nor give right for permanent appointment. Branch Manager engaging casual daily wagers used to reimburse the expenses incurred. Engagement for stop gap arrangement. Such employees could not be made permanent under orders of Court bypassing the rules. 2nd party reiterates that workman was never employed by Bank. There was no question of working more than 240 days in a calendar year by workman. There was no question of giving one months notice or retrenchment compensation to the workman. On such ground, 2nd party prays reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the claim of the Union that Shri Bahadur Sakrati has completed 240 days of service in a calendar year is legal and justified?	In Negative
(ii) Whether the action of the management of Bank of India in terminating his services w.e.f. 3-7-05 without following the provisions of Section 25-F of the Industrial Dispute Act, 1947 is legal and justified?	Termination of workman is not violative of Section 25-F of ID Act.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to workman has completed more than 240 days working during each of the calendar year, whether termination of workman is violative of Section 25-F of ID Act? 2nd party management has denied engagement of workman.

7. Affidavit of evidence is filed by workman supporting his contentions that he was continuously working from April 99 to 3-7-06 for six years in Kheda khajuriya branch. He was doing work of cleaning, sweeping, filling water, supplying drinking wayer etc. From evidence of workman, certain documents are admitted in evidence. Exhibit W-3 is order of transfer of Darbarilal Vishwakarma. It has no direct bearing to the controversy between parties. Exhibit W-4 is order of appointment of Marmatt on pay scale Rs.4060-7560. Even said document has no direct bearing about the working of Ist party workman more than 240days. Exhibit W-1 is reply submitted by Ist party before RLC, Bhopal. In Para-6 of Exhibit W-1, management has contented that it is possible that when substaff was on leave, some persons may have been engaged as casual labour. Service of casual labour engaged was to end at end of the day. Exhibit W-1 is silent about workman working more than 240 days. Similarly Exhibit W-2 reply submitted before RLC finds reference to engagement of casual labour for filling water. Said document also is silent about engagement of Ist party workman more than 240 days. The inconsistency about working days of workman 240 days and he claimed to have worked more than 300 days were appointed out in Exhibit W-3 as false. Ist party in his cross-examination says intermittently payment vouchers were prepared in his name. He was paid Rs.15/ for filling water, Rs.50/- for cleaning work, Rs.30/- for service of notice. He was fetching 4 containers of water in cycle. It was taking one hour. Sometimes his signatures were taken on the Attendance Register. He denies that he was intermittently engaged on daily wages. He denies that in Kheda Khajuria branch, when water was not supplied, he was engaged for supplying water. There was no water tap in the branch. He denies that he was supplying water to other persons.

8. Management's witness Devki Nandan Lahoti in his affidavit of evidence has stated that sometimes in absence of water supply, branch used to purchase water from local. Claimant might have been supplying water against which he was paid. The payment made against water supply cannot be treated as wages. Workman was never employed. There was no question of completing 240 days in a calendar year. Management has produced documents Exhibit M-1 to M-7 relates to the recruitment rules of subordinate staff. All those documents were that for recruitment, the person requires to be sponsored through Employment Exchange. There is no evidence that workman was sponsored through Employment Exchange or the workman was engaged following recruitment policy. Management's witness in his cross examination says that while engaging workman on work, Exhibit M-1 to 7 were not followed. He claims ignorance

about appointment of Ist party in Kheda Khajuria branch. Management's witness was unable to tell any kind of recruitment process was followed before engagement of workman. That during 2004 to 07, he was working in the branch. Prior to said period, he was not working in Kheda Khajuria branch. Management's witness claims ignorance whether Kacharulal was working as daftary. There was no sweeper working in Kheda Khajuria branch, witness of management was unable to tell at what rate workman was paid wages. Appointment letter was not given to workman. Payments were made by Branch Manager and the amount was reimbursed to him. Rules regarding reinstatement of payment of wages are not produced. Document about payment of retrenchment compensation are not available in the Bank.

9. The evidence of Ist party about his working days is not corroborated by the documentary evidence management's witness has denied workman had worked more than 240 days.

10. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in

Bhavnagar Municipal Corporation and others versus Jadega Govubha Chanubha and another reported in 2015(2)SCC(L&S) 513. Their Lordship held burden of proving such continuous service lies on workman.

In case between Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F, B of ID Act held facts must be proved by workman to claim protection under Section 25-F. facts that must be proved to claim relief from court held facts to claim protection of Section 25-F are that (i) there exists relationship of employer and employee, (ii) he is a workman under Section 2(s) of ID Act.

Their Lordship further held burden of proof lies on workman. It is for workman to adduce evidence apart from examining himself or filing an affidavit to prove the said factum. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days or examination of a co-worker.

In present case, workman has not produced any document about payment of wages to him, any co-worker is not examined. In absence of such evidence, affidavit of evidence filed by Ist party workman about his working more than 240 days cannot prove his claim.

In case of State of UP and another versus Allahabad High Court reported in 2011-LAB.I.C.4322. their Lordship held daily wager workman working for short period of 4 years, his initial recruitment was not in accordance with procedure prescribed by law. Services terminated without complying with Section 6-N Granting relief of reinstatement with backwages is not proper.

In present case, workman has failed to prove that he had worked continuously more than 240 days preceding termination of his service therefore termination of Ist party cannot be said illegal for violation of Section 25-F of ID Act. For reasons discussed above, I record my finding in Point No.1 in Negative and Point No.2 in Affirmative.

11. Point No.3- In view of my finding in Point No.1,2 workman has failed to prove 240 days continuous working preceding termination of his service, the action of the management is not illegal, workman is not entitled to any relief. Accordingly I record my finding in Point No.3.

12. In the result, award is passed as under:-

- (1) Workman has failed to prove that he worked more than 240 days in any of the year. Termination of his service is not illegal for violation of provisions of ID Act.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1542.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद के पंचाट (संदर्भ सं. 70/2014) (कम्पलेन नं. 8/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12011/31/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1542.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2014) (Complaint No. 8/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 21.07.2016.

[No. L-12011/31/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD.**

IN THE MATTER OF A COMPLAINT U/S 33 (A) OF I.D. ACT, 1947.

COMPLAINT NO. 8/2015

(Arising out of Ref. 70/2014)

Prahalad Paswan
S/o Janki Pawan

...Complainant

Vs.

1. Dy. General Manager
Bank of Baroda
Zonal Office
4th floor, Anand Vihar, Patna

2. Branch Manager
Bank of Baroda
Lodipur Branch, Gaya

...Opp. Party

Present:- Sri Ranjan Kumar Saran, Presiding Officer**Appearances:**

For Complainant : Shri Govind Kumar, Sr. Manager

For Opp. Party : Shri B. Prasad, Rep.

State :- Bihar

Industry:--Banking

Dated. 22/06/2016

AWARD

2. The Complaint case arises out from Ref No. 70/14 . In the meantime Ref. 70/2014 has been decided giving some relief to the workman . Hence, it is felt to close the complaint case. It is closed, any no dispute award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1543.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (संदर्भ सं. 27/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/33/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1543.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2014) of the Central Government Industrial Tribunal-cum-

Labour Court, Pune as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 21.07.2016.

[No. L-12012/33/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE
IN THE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE
Reference (IT) No. 27 of 2014

BETWEEN

The Assistant General Manager
Indian Bank, Zonal Office
3rd Floor, Progress House,
54, Pune Mumbai Road,
Shivajinagar, Pune 411 005

...First Party

AND

Shri Vishram Vasant Patankar
G-4, Nandadevi CHS, 15/10-A,
Kothrud, Pune - 411 029

...Second Party

CORAM : Shri. A.M.Tamboli, Presiding Officer

Appearances : First Party absent

Mr. R. G. Londhe, Advocate for Second Party.

AWARD

(Dated : 20.06.2016)

The Government of India has made this reference to this Tribunal by exercising its power u/s 10 of Industrial Disputes Act, 1947.

2. By the said reference, the Central Government has asked this Tribunal to adjudicate the dispute between the first party and the second party, and has also posed question, which runs as under :-

“Whether the action of the Asstt. General Manager and Disciplinary Authority of Indian Bank, Pune in giving the punishment of compulsory retirement to the workman Shri Vishram Vasant Patankar w.e.f. 15.09.2004 is legal and justified ? What relief the workman is entitled to ?”

3. Upon receipt of the said reference, this Tribunal was pleased to issue notices to both the sides. The second party appeared in the matter and filed his statement of claim. However, the first party bank despite the service failed to appear and file their written statement and therefore, the reference was proceeded without written statement of the first party.

4. The second party has put up his case by filing statement of claim as under.

It is alleged by the second party that he was working with the first party bank from 4-8-1980 to 15-9-2004 i.e. till his illegal compulsory retirement from services of the bank. It is alleged that he joined the second party bank as a Clerk in August 1980 at Mumbai and he worked in its various branches till 15-9-2004. It is alleged that he worked in the branch of the bank at Nana Peth, Pune at the time of his compulsory retirement. It is also alleged that during his tenure of service, he has worked with the bank with all honesty and he was performing his duties with utmost integrity and honesty. It is alleged that on 22-5-2004 the bank issued him a charge-sheet for the alleged misconduct committed by him while he was working at Nana Peth Branch. It is also alleged that the charge-sheet is false and baseless. The charges levelled against him, are vague and without any merit. It is also alleged that there is no co-relation in respect of imputation of alleged misconduct and the articles of charges.

5. It is alleged that first party bank appointed an Enquiry Officer who has conducted the enquiry as regards the said charge-sheet. It is alleged that infact the enquiry was an empty formality and thereafter, the Enquiry Officer gave its findings to the bank. So also, he had given his report. It is alleged that Enquiry Officer was partial to the management and he did not observe the principles of natural justice while holding the enquiry. It is also alleged that

the findings of the Enquiry Officer are biased and perverse. It is also alleged that it is without application of mind and thus there is miscarriage of justice.

6. It is alleged that the disciplinary authority of the first party, without taking into consideration the submission of the second party, passed an order on 15-9-2004 as under :-

“Compulsory retirement with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment under Regulation 6(c) of Memorandum of Settlement dated 10th April 2002 and Bipartite Settlement (1966) and amendments thereof.”

7. It is alleged that the punishment awarded to the workman is harsh, unreasonable, unjust and unwarranted. It is shockingly disproportionate. It is also alleged that the first party was predetermined to impose the punishment of compulsory retirement by farce of conducting an enquiry.

8. It is alleged that under the circumstances, the second party is entitled for reinstatement with back wages and/or consequential benefits. It is also alleged that he is entitled for pension, commutation amount and encashment of privilege leave.

9. It is alleged that subsequently he received a letter dt.10-6-2005 from the first party informing him that 2/3rd of eligible pension as per rules is granted to him. So also, he was informed that he is not entitled for the encashment of privilege leave. The second party requested the bank to pay full pension and amount of encashment of privilege leave, as he is compulsory retired with superannuation benefits. However, his request has been rejected by the bank. It is alleged that due to said illegal order passed by the bank, the second party has suffered loss of Rs.2.50 lac. He has suffered mental agony, and therefore, he is entitled for compensation of Rs. 5 lacs and therefore, he has raised industrial dispute under the provisions of Industrial Disputes Act, 1947. The conciliation proceedings were failed and therefore, the Asstt. Labour Commissioner has referred the dispute for adjudication to this Tribunal.

10. It is alleged that due to unwarranted termination of the workman by first party, he has lost 16 years of balance service and suffered huge monetary loss. So also, he has suffered mental agony and his image in the society is tarnished and therefore, the second party prayed for quashing and setting aside the order dt.15-9-2004 passed by the first party, and also prayed for directing the first party to reinstate the workman with full back wages and in alternative, prayed for directing the employer to pay full amount of pension w.e.f. September 2004 together with the interest @ 15% per annum till the date of actual payment, and also prayed for directing the bank to allow him to encash his privilege leave and to pay him the encashment amount along with interest @ 15% per annum from September 2004 till the date of actual payment. So also, he has prayed for compensation of Rs. 5,00,000/-, costs of Rs.50,000/- and also prayed for any other equitable reliefs.

11. The first party as stated above, failed to appear and file its written statement, and thus the reference was proceeded without written statement. The second party filed his affidavit of examination-in-chief. The first party remained absent and therefore, his cross-examination was closed.

12. The first party also failed to adduce their evidence and therefore, the Reference was fixed for arguments.

13. Taking into consideration the affidavit of examination-in-chief filed by the first party i.e. the workman, it can be seen that he has raised certain issues. The first one is that the enquiry conducted is not fair, proper and legal. It is also his contention that the findings given by the Enquiry Officer are perverse. It is his further contention that the punishment imposed of terminating him from the services, is shockingly disproportionate to the alleged misconduct. It also appears that his contention that granting him only 2/3rd pension and not allowing him to encash the privilege leave by the bank, is also not in consonance with the punishment awarded and therefore, he has sought for recovery of the said sums with 15% interest per annum from September 2004. He has also sought for compensation of Rs. 5 lacs and costs of the present litigation of Rs.50,000/-.

14. It is pertinent to note that the bank failed to cross-examine him in the Court. Consequently, entire allegations made by the second party remained unchallenged and therefore, I have no hesitation to accept the allegations made by second party.

15. Though I have come to the conclusion that this Tribunal has no hesitation to accept the contents of affidavit, it is pertinent to note that this Tribunal cannot go beyond the reference made by the Government of India. The Government of India has categorically referred the dispute wherein it has been asked to decide as to whether the punishment of compulsory retirement given to workman Shri Vishram Vasant Patankar w.e.f. 15-9-2004, is legal and justified. It is pertinent to note that the Government of India did not ask this Tribunal to decide as to whether the second party is entitled for full pension or encashment of privilege leave and consequently, whether the second party is entitled for the said sums along with interest @ 15% per annum. Consequently, these prayers made by the second

party, are beyond the reference, and now what the Tribunal has to see is as to whether the punishment of compulsory retirement awarded to him, is legal and justified. To my mind, when the bank who has imposed the punishment, has remained absent despite the due service of the present reference, the allegations made by the second party, are to be accepted in toto and therefore, I am of the opinion that the present reference made by the Government of India is necessary to be answered, as the punishment of compulsory retirement given by the bank, is illegal and unjustified. Hence I propose to pass the following award.

AWARD

1. The Reference is disposed of.
2. The punishment of compulsory retirement w.e.f. 15-9-2004 imposed on the second party workman by the first party bank, is declared illegal and unjustified.
3. The said punishment of compulsory retirement is set aside, and the first party bank is directed to reinstate the workman in the service with full back wages and consequential benefits. The Bank to grant him benefits of continuity of service.
4. No order as to costs.

Pune :

Dated : 20.06.2016

A. M. TAMBOLI, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1544.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 36/04) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/236/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1544.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 21.07.2016.

[No. L-12012/236/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/36/04

Shri Ashok Khare,
S/o Late Babulal Khare,
142, Manorama Colony,
Sagar (MP) Jabalpur

...Workman

Versus

Zonal Manager,
Bank of India,
Govind Kunj Colony,
Napier Town,
Near Russel Chowk, Jabalpur

...Management

AWARD

Passed on this 14th day of June 2016

1. As per letter dated 29-4-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/236/2003-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of India, Jabalpur Zone, Jabalpur MP in terminating the services of Shri Ashok Khare S/o Shri Babulal Khare vide order dated 10-12-2002 is legal and justified? If not, to what relief is the concerned workman entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through President of Bank of India Employees Union at Page 3/1 to 3/5. Case of Ist party workman is that dispute pertaining to termination of his service is referred after failure of conciliation proceedings. That Ist party workman was given chargesheet prior to order of punishment dated 10-12-02, chargesheet was issued by Disciplinary Authority. Without waiting for reply to the chargesheet, Enquiry Officer was appointed by 2nd party. Workman is activated Union leader, he was elected Vice President of the Bank of India, District Sagar. He held such post from 1992 to 1997. Again he was elected as Assistant General Secretary in 1999. Management of Bank was annoyed due to his Union activities. The management of 2nd party had malafied against him. With such malafied intention, chargesheet was issued to workman. In reply to chargesheet, workman explained circumstances regarding the charges alleged against him. Management reiterates his reply to charges as admission of charges and did not conduct enquiry. The findings were submitted by Enquiry Officer without conducting enquiry. Showcause notice was issued regarding proposed punishment to him. Reply submitted to showcause notice by workman was not considered while passing order of dismissal. Ist party workman submits that findings of Enquiry Officer are perverse. Any charges against him are not proved from evidence in Enquiry Proceedings. Punishment imposed against workman is illegal. 2nd party was bound to hold and complete enquiry against him. Chargesheet was issued under Clause 5(j) of the settlement dated 10-4-02. Said rule compels 2nd party and Enquiry Officer to conduct complete enquiry. No enquiry is required to be conducted as provided under Clause 12(e) of the settlement. That workman had not admitted charges against him. He was given assurance by Enquiry Officer. Workman had explained surrounding circumstances. Enquiry Officer had given assurance of lesser punishment. 2nd party adopted discriminatory manner while awarding punishment. Punishment imposed on him is improper and disproportionate. 2nd party has complied settlement. Order of Appellate Authority is also illegal and passed without application of mind. Ist party prays to set aside order passed by Appellate Authority modifying punishment of dismissal to compulsory retirement.

3. 2nd party filed Written Statement at Page 7/1 to 7/9 opposing claim of workman. 2nd party submits that workman was initially appointed as clerk from 29-12-81. the service record of workman as unsatisfactory, several punishments were imposed against him in the past, leniency was shown towards workman. Punishment of warnings on several occasions, other punishments were imposed. Workman had apologized on all occasions and management had shown leniency. Workman taken advantage of leniency shown to the management and continued the misconduct. Punishment of warning was issued to workman on 25-5-00 in the matter of misuse of loan sanction for purchase of Banks shares. Another punishment by way of penalty of reduction of basic pay by one stage for two years vide order dated 30-9-00 was issued for deriving wrongful pecuniary gain by giving wrong information with regard to the balance in SB Account., punishment of warning vide order dated 10-5-01 was issued for misuse of staff housing loan facility.

4. Workman was working as staff clerk at Sagbar branch, he was issued chargesheet on 26-9-02, corrigendum dated 4-10-02 was issued under clause 5(j) of Bipartite Settlement for committing act of the interest of the Bank or gross negligence involving or likely to involve Banks in serious loss. Executive Director as per order dated 14-6-02 ordered a departmental enquiry to the charges levelled against workman Shri Ajay Kher was appointed Enquiry Officer, Shri Neeraj Rastogi was appointed Presenting Officer, enquiry was fixed on 10-10-02 for preliminary hearing. Presenting Officer submitted documents Exhibit ME-1 to ME-31, its copy were supplied to workman. After workman had gone through documents, admitted all those documents. When enquiry was fixed on 19-10-02, Defence Representative of workman was not present. Workman requested to be defended by Shri Naresh Shrivastava, his request was allowed. On same day, workman had submitted reply dated 10-10-02 to the chargesheet was taken on record. Workman had submitted pointwise explanation in his reply admitting all charges against him. Workman had requested to consider his case sympathetically. Workman did not produce Defence Witnesses. As workman admitted all charges, enquiry was concluded on 19-10-02. Enquiry Proceeding was signed by Enquiry Officer, Presenting Officer, Defence Representative and workman himself., Enquiry Officer submitted his findings on 28-10-02 holding workman guilty of charges against him. The findings of Enquiry Officer were supplied to workman. Disciplinary Authority imposed punishment of dismissal after issuing showcause notice. 2nd party reiterates that workman challenged order of his dismissal in appeal. The Appellate Authority had modified punishment of dismissal to compulsory retirement as per order dated 21-4-03. 2nd party submits that order of compulsory retirement passed by Appellate Authority is proper. Workman committed serious kind of misconduct. Bank is financial institution deals with

public funds on trust. Bank cannot retain any employee with doubtful integrity, punishment of dismissal is proper. It is also commensurate to the gross misconduct proved against workman. Enquiry is properly taken. All adverse contentions of workman are denied in parawise reply. Workman received his terminal dues PF- Rs.334440.62, Gratuity- Rs.161488= Total Rs.495928.62. 2nd party prays that reference be answered in its favour.

5. As per order dated 26-2-05, enquiry conducted against workman is found legal and proper.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of compulsory retirement imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The term of reference pertains to termination of Ist party workman as per order dated 10-12-03. The dispute was referred as per order dated 29-4-04. Prior to dispute was referred, workman had challenged order of his dismissal filing appeal. Punishment of dismissal was modified to compulsory retirement by Appellate Authority. Order of Appellate Authority is produced at Exhibit M-24. Chargesheet was issued to workman is produced at Exhibit M-4. Charges pertains to mis appropriation of amount in RD Account of Kumar Dhanvanti A/C No. 340-4, Smt. Vimal Singh A/c No. 3405, Shri Vikram Singh- A/C No. 3406, Shri Nirmal Singh- A/C No. 3407 opened on 26-9-00 with monthly instalment of Rs.200 each for 60 instalments. 14 instalments of Rs.200/- per instalment and RD A/cNo. 3411 of Manorama Singh opened on 10-10-10 monthly instalment of Rs.200 each for 60 instalments, 13 instalments amounts Rs.200 each were misappropriated by workman. In RD Account 3411 fake entries were taken in the pass book of the customer. Charge No.2 pertains to SB Account in name of Ram Kumari Rathore A/C No. 19024 workman received cash for depositing amount received and the same were misappropriated and fake entries were made in the pass book. Charge No.3 pertains to fake RD. in A/C No. 3451 issued in name of Smt. Hemkumari Rathore and issued passbook on 4-10-01- monthly instalment Rs.1500 for 12 months. Charge No. 4 pertains to workman indiscriminately issuing cheques without sufficient balance in his SB A/C No. 8512. Chargesheet was issued to workman, corrigendum Exhibit M-37 was issued on 26-9-02. Workman submitted explanation to the chargesheet Exhibit M-5 dated 18-10-02. The point pertains to whether charges alleged against workman are proved. The Enquiry Proceeding dated 19-10-02 shows that workman submitted explanation. Workman was asked whether he accepts or denied charges leveled against him. As per memorandum dated 26-9-02, workman replied that he submitted his pointwise explanation vide his reply dated 18-10-02 and accept all charges, he would also like to mention that all concerned parties are satisfied with him and also with the Bank. He humbly requests to consider his case sympathetically. Enquiry Proceedings Exhibit M-25 is signed by Enquiry Officer, Presenting Officer, Defence Representative and CSE Ashok Khare. Enquiry Officer concluded that since CSE accepted the charges leveled against him, enquiry proceedings concluded. As workman has admitted all charges, enquiry was concluded.

8. Learned counsel for Ist party Shri S.Mishra however submits that management was bound to conduct enquiry. My attention was pointed out to Clause 12(e). Relevant clause is reproduced for clarity purpose-

“An enquiry need not be held

- (i) The Bank has issued a showcause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct;
- (ii) The employee makes a voluntary admission of his guilt in reply to the aforesaid showcause notice; and
- (iii) The misconduct is such that even if proved the Bank doesnot intend to award the punishment of discharge or dismissal.

Learned counsel Shri S.Mishra emphasized that matter pertaining to dismissal of workman is in violation of Clause c(iii). Workman has admitted charges against him Exhibit M-25 in my considered view, in light of clause e(ii), as workman has admitted charges against him in the reply Exhibit M-5, matter is covered under Clause e(ii). As

charges are admitted, management was not required to conduct further enquiry. The admission of charges by workman in Exhibit M-5 before Enquiry Officer needs no evidence about the charges against him. In view of Clause 58 of Evidence Act, the admission of charges is sufficient to prove. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

9. Point No.2- Punishment of dismissal was imposed against workman after findings were submitted by Enquiry Officer prior to the order of reference, Appellate Authority modified punishment of dismissal into compulsory retirement, question involved for consideration is whether punishment of compulsory retirement imposed against workman is excessive or disproportionate?

10. Learned counsel for workman submits that Bank has not suffered any financial loss, negligence in duty not proved. Chargesheet issued to workman pertains to misappropriation of amount. In Explanation Exhibit M-5, workman has admitted receipt of amount and for compelling circumstances, amount was returned by him and he had deposited amount of respective account holders. He received amount of instalments and not depositing in RD Accounts certainly the Bank is under obligation to pay the interest. When amount of instalments was not received by Bank, despite it was required to pay the interest, it is clear that Bank had certainly suffered loss. Receiving amount of RD Accounts and taking entries in pass book without depositing amount shows not only negligence but fraudulent intention on part of workman. Considering such serious kind of misconduct, charges admitted by workman, punishment modified in appeal to compulsory retirement cannot be said excessive or disproportionate.

11. Incidentally I may also refer to ratio relied by learned counsel by 2nd party Shri A.K.Shashi in-

Case between Vivekanand Sethi versus Chairman, J&K Bank Ltd and others reported in 2005(5)SCC-337. Their Lordship held when facts are admitted, enquiry would be an empty formality.

In case between South Indian Cashew Factories Workers Union versus Kerala State Cashew Development Corporation Ltd. And others reported in 2006(5)SCC-201. Their Lordship held if enquiry is fair and proper then in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the ID Act, 1947 gives ample power to the Labour Court to reappraise the violence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment.

In view of ratio held in above cited case and punishment of dismissal was modified by appellate authority to compulsory retirement, punishment of compulsory retirement imposed against workman calls no interference.

12. Shri A.K.Shashi further relies on ratio held in

Union Bank of India versus Vishwa Mohan reported in 1998-I-LLJ-1217. Their Lordship held in banking business absolute devotion, diligence and integrity need to be preserved by every bank employee and in particular by bank officer. If this is not observed, confidence of depositors would be impaired.

The charges alleged against workman pertains to negligence in duties, misappropriating amounts of monthly instalments. Certainly the Bank would lose confidence in workman. Therefore reinstatement of workman imposing some other punishment would not be justified.

Shri A.K.Shashi further relies on ratio held in case of P.V.Balkan Nair versus Suptd. Of Post Office reported in 2001-LAB.I.C.3201, 2006(1)SCC-63, 1996(9)SCC-69 & 1996(3)SCC-364. I find it as not necessary to discuss ratio held in those cases in view of charges admitted by workman and punishment of dismissal modified to compulsory retirement. I record my finding in Point No.2 in Affirmative.

13. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 21 जुलाई, 2016

का.आ. 1545.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 77/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-12011/103/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 21st July, 2016

S.O. 1545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 21.07.2016.

[No. L-12011/103/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/77/2012

General Secretary,
Dainik Vetan Bhogi Bank Karamchari Sangathan,
Central Office, F-1, Karmbhoomi,
Tripti Vihar,
Opp. Engineering College,
Ujjain

...Workman/Union

Versus

The Managing Director,
Bank of India,
Head Office, Star House,
C-5, G Block, Bandra Kurla Complex,
Bandra (East)
Mumbai

...Management

AWARD

Passed on this 7th day of June, 2016

1. As per letter dated 26-6-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/103/2011-IR(B-II). The dispute under reference relates to:

“Whether Shri Ashok Kumar Vyas is entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008? If yes, what relief he is entitled to?”

2. In present reference, award was passed in favour of workman on 16-6-15. As per order dated 16-3-16, miscellaneous application 8/2015 for correction of award was allowed.

3. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim on 16-11-2012. Case of Ist party workman is workman was orally engaged in extension branch in Dewas branch of the Bank on daily wages Rs. 100/- as peon. Workman was required to work from opening till closing of the Bank. That wages of the workman were increased from Rs.50 to 100 per day. He was continuously working more than 240 days from 1-1-2006. When workman claimed appointment on permanent post and payment of bonus, his services were terminated from 2-6-08. Workman was not served notice, retrenchment compensation was not paid to him. The dispute about denial of bonus was raised before ALC, the dispute has been referred.

4. IInd party filed Written Statement on 23-9-13 opposing claim of the workman. IInd party submits that workman is not member of the Union. Union has no locus standi to raise the dispute. Employer employee relation is not existing between parties. Workman is no covered under section 2(s) of ID Act. Employment of any person in industry is variable. The apprentice is not covered as workman under Section 2(s) of ID Act. Branch Managers are authorized to engage persons as per exigencies. The Branch Manager is not Appointing Authority. The Branch Manager can engage sub staff temporarily when there is increase in work. In the matter of recruitment, the reserved policy needs to be followed. The names are required to be called from Employment Exchange after advertising post. It is further submitted that casual workman is paid wages as per the prevailing rates. It is reiterated that workman is not covered under Section 25 B of ID Act. It is denied that workman was engaged from 1-1-2006. It is denied that his services were discontinued without notice.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Ashok Kumar Vyas is entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The terms of reference relates to entitlement of bonus to workman. his claim is denied by IInd party denying employer employee relationship.

7. Workman filed affidavit of his evidence. He has stated that he was working with IInd party in extension branch at Rewa from 1-1-06 to 2-6-08. He was paid Rs.50/- per day. The representative of workman Shri R.Nagwanshi submitted workman is not desiring to adduce oral evidence. Secondly workman could not be cross-examined with remark that his evidence shall not be considered. While passing earlier award, error was committed that management has failed to cross examine workman and his evidence remained unchallenged. Said error is now corrected. The evidence of workman could not be accepted as he failed to appear for his cross-examination. As such there is no evidence to support claim of workman about his working from 1-1-06 to 2-6-08. Therefore claim of workman for bonus cannot be accepted. The issue is answered in Negative.

8. In the result, award is passed as under:-

- (1) The workman Shri Ashok Kumar Vyas is not entitled for payment of bonus for the period from 1-1-2006 to 2-6-2008.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1546.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 70/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/90/2008-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.07.2016.

[No. L-12012/90/2008-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 70/2008Date of Passing Award – 2nd March, 2016**Between:**

The Asst. General Manager,
State Bank of India, Main Branch,
Cuttack

...1st Party-Management**(And)**

Their workman Shri Trilochan Behera,
Qr. No. VR-5/1, Kharvela Nagar,
Unit-3, Bhubaneswar, Odisha

...2nd Party-Workman**Appearances:**

Alok Das, Chief Manager (Law)

...

For the 1st Party- Management

None

...

For the 2nd Party- Workman**AWARD**

An industrial dispute existing between the employers in relation to the management of State Bank of India, and their workman has been referred to this Tribunal by the Government of India in the Ministry of Labour exercising the powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-12012/90/2008-IR(B-I) dated 10.10.2008.

2. The matter under dispute has been given under the Schedule of the aforesaid letter which reads as follows:-

“Whether the action of the management of State Bank of India, Main Branch, Cuttack in terminating the services of Shri Trilochan Behera w.e.f. 30.9.2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? If not, to what relief is the workman concerned entitled?”

3. In nutshell the case of the 2nd Party-workman is that he was engaged in the establishment of the 1st Party-Management in the 4th grade cadre temporarily with effect from 27.7.1992 after being succeeded in an interview conducted by the 1st Party-Management. He worked as a Messenger on temporary/casual on daily wage basis being assured of permanent absorption in the office of the 1st Party-Management. Having worked as such from 27.7.1992 to 30.9.2004 he worked for more than 240 days continuously and uninterruptedly preceding to his alleged termination on 30.9.2004. According to him the termination was in violation of mandatory provisions of Section 25 of the Industrial Disputes Act as well as principles of natural justice. Hence he raised a dispute before the Regional Labour Commissioner (Central) vide his letter dated 29.10.2007 where-upon a conciliation proceeding was initiated. On failure of conciliation proceedings the present reference has been made to this Tribunal for adjudication of the dispute to the effect mentioned in supra.

4. Being noticed the 1st Party-Management has made its appearance and contested the claim taking a stand that the 2nd Party-workman had never worked continuously and uninterruptedly for more than 240 days in any capacity. His services were utilized on daily wage basis, intermittently at the time of exigencies and he was never assured of absorption in the grade-IV category of post by the 1st Party-Management. Further taking into consideration of the settlement made between All India State Bank of India Staff Federation and the Management of State Bank of India an interview of temporary/daily wagger/casual worker engaged in different branches of the 1st Party-Management was conducted for making a panel so as to enable the 1st Party-Management to absorb such above casual/temporary/daily wagers like the 2nd Party-workman in the 4th grade cadre of the 1st Party-Management. It is its further case that the 2nd party-workman could not succeed in the interview and failed to be empanelled. It is also the stand of the 1st Party-Management that some un-successful candidates like the 2nd Party-workman and some wait-listed candidates had preferred a Writ before the Hon'ble High Court of Orissa for their permanent absorption in different establishments of the 1st Party-Management. The Hon'ble High Court vide its judgement dated 15.5.1998 in the case of Amhimanyu Mandal and State Bank of India upheld the action of the Management as proper. Special Leave Petition preferred against the said order of the Hon'ble High Court was also dismissed in the Hon'ble Supreme Court. In that view of the matter the present reference is also not maintainable in the eye of law. Besides it is the specific stand of the 1st Party-Management that the 2nd party-workman was never employed continuously and uninterruptedly for more than 240 days in a year or in any period. His engagement, if any, was purely on daily and casual basis and it was intermittently and at the time of exigencies and on need basis in the Branch-Bank. There was no question of disengagement or termination

of his service with effect from 30.9.2004. The Management has also challenged the maintainability of the reference on account of dispute being raised after more than five years more particularly after dismissal of the Writ by the Hon'ble High Court.

5. It is pertinent to mention here that despite extending several opportunities the 2nd Party-workman did neither come forward to adduce any oral evidence or he filed any documents in support of his claim. Rather he kept himself out of the proceeding after filing his statement of claim and remained unrepresented. As such he was set exparte on 11.9.2012. On the other hand the 1st Party-Management has examined one Shri Saroj Kanta Choudhury as M.W.-1 and filed certain documents.

6. The 2nd Party-workman having claimed to have worked for a period from 1992 to 2004 i.e. for twelve years, as per the settled principle enunciated by the Hon'ble Apex Court in the case of Surendranagar District Panchayat – Versus- Dahyabhai Amarsinh reported in AIR 2006 SC 110 and in the case of Mohan Das N. Hegde (Dead) by L.Rs – Versus- State of Karnataka and Another reported in AIR 2005 SC 2178 the 2nd Party-workman is required to prove that he had worked for more than 240 days continuously and uninterruptedly in a period of 12 calendar months preceding to his alleged termination. Mere assertion or statement in that regard would not sufficient to hold that such burden of proof has been duly discharged by the 2nd Party-workman. The 2nd Party-workman has not filed a single scrap of paper in respect of his engagement or employment in the 1st Party-Management while filing his claim statement. The 1st Party-Management, on the other hand has adduced oral evidence through M.W.-1 to refute the assertion made by the 2nd party-workman and he did not work continuously and interruptedly work more than 240 days in a calendar year. As per M.W.-1 the disputant-workman was only engaged on daily wage basis, casually, in exigencies and on need basis. His such service or engagement was never continuous and as such there was no question of termination as asserted by the 2nd Party-workman. Law is well settled that a temporary or daily wagger has no right to claim his reinstatement and other benefits particularly, when he is not engaged or worked for 240 days continuously during a period of 12 calendar months preceding to the date of his so called termination. The 2nd Party-workman having failed to adduce any evidence or material before this Tribunal to discharge his onus in respect of his engagement this Tribunal is constrained to hold that the 2nd Party-workman has not worked for 240 days continuously during the period of 12 calendar months preceding to his alleged disengagement and accordingly it can be safely held that the 2nd Party-workman was never employed or engaged by the 1st Party-Management either temporarily or casually for more than 240 days during the period of 12 calendar months. The employment of the 2nd workman, if any, being in exigency and in need basis for certain specific period/days which was less than 240 days continuous period and purely on contract basis there is no question of termination of service of the 2nd party.

7. In view of my findings given above the reference is answered accordingly.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1547.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 12/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-12012/63/2009-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1547.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.07.2016.

[No. L-12012/63/2009-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present :**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 12/2011

Date of Passing Award – 29th February, 2016

Between:

The General Manager,
SBI, Palsaguda Branch, Phulbain,
Odisha

...1st Party-Management.

(And)

Their workman Shri Pravat Kumar Patnaik,
C/o Shri Kailash Chnadra Jena,
Qr. No. VR-5/1, Kharvela Nagar,
Unit-3, Bhubaneswar, Odisha

...2nd Party-Workman.

Appearances:

Sunil Kr. Khatai, Asst. Manager (Law) ... For the 1st Party- Management

None ... For the 2nd Party- Workman

AWARD

An industrial dispute existing between the employers in relation to the management of State Bank of India, and their workman has been referred to this Tribunal by the Government of India in the Ministry of Labour exercising the powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-12012/63/2009-IR(B-II) dated 18.02.2011.

2. The matter under dispute has been given under the Schedule of the aforesaid letter which reads as follows:-

“Whether the action of the management of State Bank of India in terminating the services of Shri Pravat Kumar Patnaik, Ex-Messenger, SBI, Palasaguda Branch, Phulhani w.e.f. 30.09.2004 without complying with provisions of the Industrial Dispute Act, 1947 is legal and justified? To what relief the concerned employee is entitled”

3. The case of the 2nd Party-workman as emerges from his statement of claim is that he joined as Messenger in the State Bank of India, Palasaguda Branch, District-Phulbani on 17.6.1985 on temporary/casual/daily wage basis having succeeded in an interview conducted by the Branch Manager of the above State Bank of India Branch. He was given assurance of permanent absorption in the 1st Party-Management after completion of one year. It is his contention that though he worked for more than 240 days continuously and uninterruptedly having been employed as a Messenger in the said Branch from 17.6.1985 till his termination i.e. 30.9.2004, his service was not regularized. Rather the 1st party-Management terminated his service without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act and Rules framed therein as well as not resorting to the principles of natural justice. His grievance petition before the authority of the 1st party-Management did not yield any result, as a result of which he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 29.10.2007. The conciliation proceeding was followed and when the same was failed the present reference has been made. It is his further claim that being terminated illegally without any reason he is entitled with reinstatement with full back wages, continuity of service and other service benefits with effect from the date of his termination i.e. 30.9.2004.

4. Contesting the claim of the 2nd Party-workman the 1st Party-Management has filed its written statement taking a stand that as per the settlement entered by the 1st Party-Management with the State Bank of India Staff Federation it

was decided that modalities of drawing names from either panel of temporary employees or the panel of daily wager and casual labourer would be decided administratively on Circle to Circle basis depending upon the local requirements in consultation with the Federation affiliated by the Circle Management and accordingly panel of temporary employee and panel of daily wager and casual labourer were prepared and vacancies in the office of the Management were filled up. The panels prepared by the Bank remained valid up to 31.3.1997. The services of the employees in the panel were regularized by filling up the vacancies of up to the year 1994. Some of the wait-listed candidates like the 2nd Party-workman preferred a writ before the Hon'ble High Court when they were not absorbed and regularized in the service. The Hon'ble High court vide its judgement dated 15.5.1998 in the case of Abhimanyu Mandal and State Bank of India upheld the action of the Management as proper though the said judgement was challenged before the Hon'ble Apex Court vide S.L.P. No. 3038/99. The Hon'ble Apex Court upheld the judgement of the Hon'ble High Court. It is the further stand of the 1st party-Management-Bank that another O.J.C. bearing No. 8948/98 was also initiated for regularization of services of the wait listed candidates, but the same was dismissed. It is the stand of the 1st party-Management that the 2nd Party-workman was employed purely on temporary and daily wage basis and his employment was intermittent whenever it was required by the Branch or on the basis of the need of work. According to the 1st Party-Management the 2nd Party-workman had never completed 240 days continuous, uninterrupted engagement in a calendar year and he was never under employment after 1996. As such there was no question of disengagement or termination of his service with effect from 30.9.2004. It has also challenged the maintainability of the reference on account of the dispute being raised after more than five years and the 2nd Party being not a workman under the 1st party-Management as defined under Section 2(s) of the Industrial Disputes Act.

5. It is pertinent to mention here that after filing of written statement by the 1st Party-Management the 2nd Party-workman did not appear and contest the dispute as a result of which the 1st party-Management had been allowed to adduce its evidence alone. The 1st Party-Management has filed sworn affidavit of one Shri Madhaba Chandra Mishra and certain documents which were accepted by the Tribunal. Such oral and documentary evidence seems to have been remained uncontroverted on account of the 2nd party-workman remaining continuous absent in the proceeding before this Tribunal. The sum and substance of the contents of the above evidence is nothing more or less than the pleadings advanced by the Management in its written statement. It is well settled by the Hon'ble Apex Court in the case of Surendranagar District Panchayat –Versus- Dahyabhai Amarsinh reported in AIR 2006 SC 110 and in the case of Mohan Das N. Hegde (Dead) by L.Rs – Versus- State of Karnataka and Another reported in AIR 2005 SC 2178 that the burden lies on the workman to prove that he had worked for 240 days continuous and uninterrupted service in a preceding twelve months prior to his alleged retrenchment in order to obtain any relief under the Industrial Disputes Act as mandate under Section 25. In the above back-drop of the settled principles it is found that the 2nd Party-workman has not come forward to adduce any evidence in support of his claim. On the other hand the evidence of the 1st Party-Management remains uncontroverted and the same having supported the pleading of the Management it can be safely inferred that the workman is no more in service of the 1st Party-Management after 1994. Having failed to prove that he had worked continuously 240 days in the preceeding one year prior to his alleged retrenchment i.e. 30.9.2004 the 2nd Party-workman is not entitled to any protection and compliance under section 25-F of the Act. As a result the workman is not entitled to any relief as claimed by him.

12. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1548.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1548.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-14 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai now as shown in Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workmen, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

JUSTICE S.P.MEHROTRA

Presiding Officer

APPLICATION CGIT-14 OF 2012

Parties: Imran Abdul Rashid Ansari

...Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
 2. The Commissioner of Income Tax-I, Nashik
 3. The Joint Commissioner of Income Tax, Range-3, Dhule
 4. The Assistant Commissioner of Income Tax, Circle 3(1) (Administration), Dhule.
 5. The Income Tax Officer, Ward No.3 (3), Dhule.
 6. Chetan Enterprises, Guruwar Peth, Pune-411042
- ...Opposite Parties/Respondents

Appearances:

For the Applicant	:	Mr.V.G.Indrale, Adv.
For the Opposite Party Nos. 1 to 5	:	Mr.Vinod Joshi, Adv.
For the Opposite Party No. 6	:	None present.
State	:	Maharashtra

Mumbai, dated the 26th day of May, 2016.

AWARD

1. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 27 of the said Application.
 2. It is, inter-alia, stated in the said Application that the Applicant is working as a Data Entry Operator and Typist/Computer Operator on daily rated basis in the Office of Income Tax Officer, Ward No.3 (3), Dhule; and that the Applicant was initially receiving daily wages @ Rs.88/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 21.6.2004 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2004; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely; Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents terminated the services of the Applicant in the evening on 2.2.2012.
 3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 27 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.
 4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.
 5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents No.1 to 6 were duly served.
- Mrs.P.S.Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents No. 1 to 5. However, despite service of notice, none was present for the Opposite Party/Respondent No.6 on the said date i.e. 25.5.2012.
6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents No.1 to 5.
 7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No.6, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 6 for filing Written Statement.
 8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent No.6 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No.6, as is evident from the perusal of the order-sheet of the case.
 9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 5, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 5 (hereinafter also referred to as "the Answering Opposite Parties/ Respondents") that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of "industry" under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not "employer" within the meaning of the definition of "employer" under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was earlier working as a casual labour and he was paid as per the statutory norms applicable; and that the said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that later the Applicant was intermittently doing the work of Data Entry of Income Tax Returns in the Computer system when his services were required by the Department; and that the Applicant was being paid based on the number of Returns whose data was entered into the computer by him at prescribed rates; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Applicant’s services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Contractor has been appointed for unskilled labour whereas the Applicant is doing a different work which is Data Entry of Returns. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 27 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 6, it is, inter-alia, stated that the Opposite Party /Respondent No. 6 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party /Respondent No. 6 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 6 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party No. 1 to 5 .

None present on behalf of the opposite party no.6

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. *In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.*

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain ***provisions of the Industrial Disputes Act 1947.***

18. ***Preamble*** to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. ***Sub-section (1) of Section 10*** of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. ***Section 2A*** of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1)

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”*

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of **“Industrial Dispute”** as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word **“employer”** occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “ employer” means-

- (i) in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;**
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”**

25. The word **“Workman”** occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
- (ii) who is employed in the police service or as an officer or other employee of a prison; or**
- (iii) who is employed mainly in a managerial or administrative capacity; or**
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”**

26. From a combined reading of **Section 2(k)**, **Section 2(g)** and **Section 2(s)** of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in **Section 2(j)** of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of **Section 10** or **Section 2-A** of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in **Section 2(j)** of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of **Section 2(j)** of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of **Section 2(j)** of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under **Section 2(j)** of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of **2(j)** of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as

defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)*.

31. *In reply*, Mr. V.G. Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore, the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr. V.G. Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) *Bangalore Water Supply and Sewerage Board vs. A. Rajappa, AIR 1978 Supreme Court 548.*
- (ii) *Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182.*
- (iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001(9) SCC 713.*
- (iv) *Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116.*
- (v) *Life Insurance Corporation of India vs. R. Suresh, 2008(11) SCC 319: AIR 2008 (supp) 1887.*
- (vi) *Asha Ram vs. Divisional Engineer, Telecom Department, 2001(9) SCC 382.*
- (vii) *All India Radio vs. Santosh Kumar and Another, 1998 I CLR 684(SC).*

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of *Bombay & Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 Supreme Court 610*, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S. 2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S. 2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S. 2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S. 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S. 2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is

organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14. It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as “the primary and inalienable functions of a constitutional Government” [Vide: Coomber v. Justices of Berks, (1883) 9 AC 61]; and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.”

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word “Undertaking” in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of “industry” in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No. 2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

“11.A corporation may, therefore, discharge a dual function” it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of “industry”.

“15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry.....”.

“17. The result of the discussion may be summarized thus : (1) The definition of “industry” in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a

private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act”.

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word “industry” as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department, Item No. (iii)*, their Lordships observed as under:

“ Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to “fire calls”. Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

38. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of “industry” in the Act.”.

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of “industry”. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in-charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of “industry”, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of “employees” under the Act would certainly be entitled to the benefits of the Act.”

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of “industry”. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word “industry”. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In **Bangalore Water Supply and Sewerage Board v. A.Rajappa**, AIR 1978 SC 548, relied upon by Mr. V.G. Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of “industry” under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry’ in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) ‘Undertaking’ must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be ‘industry’ provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold ‘industry’ undertakings, callings and services, adventures ‘analogous to the carrying on of trade or business.’ All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the

services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

- (a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.*
- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.*
- (c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).*
- (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

44. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In *Des Raj vs. State of Punjab and Others*, AIR 1988 SC 1182, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

46. It will thus be noticed that the decision in *Desi Raj case* (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of ‘industry’. Hence, the Departments discharging sovereign functions are not covered within the purview of “industry” under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of “industry” and, therefore, the Irrigation Department was covered within the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001 (9) SCC 713** relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an “industry” within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in *Bangalore Water Supply & Sewerage Board vs. A. Rajappa*, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others*, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set-aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

*“ 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in *Jagannath Maruti Kondhare* (supra) to hold that the Forest Department could be held to be “an industry”.*

*“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the *Jagannath Maruti Kondhare*’s case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”*

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others*, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

48. In **Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the

question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. *SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in State of Bombay and others case (supra).*

“35 *In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties.”*

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

50. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.

51. In **Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

53. In **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in **General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767**, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.

54. In **All India Radio vs. Santosh Kumar and another, 1998 1 CLR 684** (SC), their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

“The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term ‘industry’ as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.”

55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

56. In **General Manager Telecom vs. S. Srinivasa Rao and others 1997 1 LLJ 255 (SC): 1997 (8) SCC 767**, which as noted above, has been relied upon by their Lordships of the Supreme Court in Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an “industry” within the meaning of the definition of “industry” in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In **Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat, 2004 - III LLJ 259 (Gujarat)**, relied upon by Mr.Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of

industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board's case (supra), including the law falling under Articles 309 to 311 of the Constitution.

Ans. (ii) *The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an "industry" under Section 2(j) of the Industrial Disputes Act, 1947".*

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

"26. In Bangalore Water Supply & Sewerage Board's case (supra), the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an "industry" within the meaning of Section 2 (j):

(i) The activity of the enterprises is systematic;

(ii) The activity is organized by co-operation between the employees and the employer; and

(iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants."

"49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e., primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board's case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of "industry" if, and only if, such activity satisfies the triple ingredients test."

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. ***From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:***

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an "industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word "industry" as defined in the Industrial Disputes Act, 1947.

- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word “industry”.
- (v) If a service rendered by an individual or a private person would be an “industry” it would equally be an “industry” in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to *Article 265 of the Constitution of India* which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in *Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382*. Their Lordships of the Madras High Court quoted the following passage from the decision in *Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37*:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”

67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

68. *Entry 82 of List I (Union List) of the VII Schedule* to the Constitution of India reads as under:

“82. Taxes on Income other than Agricultural Income.”

69. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List 1 (Union List) of VII Schedule to the Constitution of India.

70. In exercise of the above power, Parliament has enacted the ***Income Tax Act, 1961***. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the ***Income Tax Rules, 1962***.

71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .

73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.

74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.

75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.

76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.

77. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.

78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.

79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.

80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.

81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assessees.

82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.

83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.

84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.

85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.

86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

87. In this regard, reference may be made to a decision of the Supreme Court in *New Delhi Municipal Committee vs. State of Punjab and Others*, AIR 1997 SC 2847. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

“91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that “no tax shall be levied or collected except by authority of law.” Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as “Parliament for the Union” and the State Legislatures, which are described by Art. 168 in the singular as “Legislature of a State.” While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law, -

(a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) to (d)

as may be specified in law.”

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

*141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that “the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State’ unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that “the property and income of a State shall be exempt from Union taxation”. But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States’ decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which*

trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2)."

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in ***Agricultural Produce Market Committee vs. Asok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116***, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned "taxation" as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word "industry" as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in ***Bangalore Water Supply and Sewerage Board case (supra)***. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

(A) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (supra) is as under:

“(i) *The activity of the enterprise is systematic;*

(ii) *The activity is organized by co-operation between the employees and the employer;*

(iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes."*

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in ***Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)***, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of "industry" even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in ***Bangalore Water Supply and Sewerage Board case (supra)*** wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in

Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of “industry”. We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of “industry”. The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be “industry”, the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of “industry” as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an “Industrial Dispute”.

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No.1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE No. 2:** Issue No.2, as noted above, is as to “whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?”

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No.2 stands disposed of accordingly.

104. **ISSUE No. 3:** Issue No.3, as noted above, is as to “whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?”

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No.3 stands disposed of accordingly.

108. **ISSUE No. 4:** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No.4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1549.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1549.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-15 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai now as shown in Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workmen, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1

MUMBAI

Present

JUSTICE S.P.MEHROTRA

Presiding Officer

APPLICATION CGIT-15 OF 2012

Parties: Aniruddha Kalidas Zope

...Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
2. The Commissioner of Income Tax-I, Nashik
3. The Joint Commissioner of Income Tax, Range-3, Dhule
4. The Assistant Commissioner of Income Tax, Circle 3(1) (Administration), Dhule.
5. The Income Tax Officer, Ward No.3 (1), Dhule.
6. Chetan Enterprises, Guruwar Peth, Pune-411042

...Opposite Parties/Respondents

Appearances:

For the Applicant	:	Mr.V.G.Indrale, Adv.
For the Opposite Party Nos. 1 to 5	:	Mr.Vinod Joshi, Adv.
For the Opposite Party No. 6	:	None present.
State	:	Maharashtra

Mumbai, dated the 26th day of May, 2016

AWARD

1. The present ***Application*** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 26 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a Peon on daily rated basis in the Office of Income Tax Officer, Ward No.3 (1), Dhule; and that the Applicant was initially receiving daily wages @ Rs.119/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 16.8.2004 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2004; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely;

Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents terminated the services of the Applicant in the evening on 2.2.2012.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 26 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents No.1 to 6 were duly served.

Mrs. P.S. Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents No. 1 to 5. However, despite service of notice, none was present for the Opposite Party/Respondent No.6 on the said date i.e. 25.5.2012.

6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents No.1 to 5.

7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No.6, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 6 for filing Written Statement.

8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent No.6 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No.6, as is evident from the perusal of the order-sheet of the case.

9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 5, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 5 (hereinafter also referred to as “the Answering Opposite Parties/ Respondents”) that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not “employer” within the meaning of the definition of “employer” under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was working as a casual labour and he was paid daily wages, on the basis of the bills submitted by him from time to time, and that the said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that the services of the Applicant

were required only intermittently as per requirement of the Income-tax Department; and that the Applicant was casual labour and was paid his wages for the number of days put in by him; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy to time. It is, inter-alia, further stated in the Written Statement that the Applicant's services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 26 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 6, it is, inter-alia, stated that the Opposite Party /Respondent No. 6 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party /Respondent No. 6 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 6 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/ Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party No. 1 to 5 .

None present on behalf of the opposite party no. 6.

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. ***In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.***

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE No. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain ***provisions of the Industrial Disputes Act 1947.***

18. ***Preamble*** to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. **Sub-section (1) of Section 10** of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. **Section 2A** of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1)

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”*

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of “**Industrial Dispute**” as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word “**employer**” occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “ employer” means-

(i) in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) *in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”*

25. The word “**Workman**” occurring in Section 2(k) of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) **who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
- (ii) **who is employed in the police service or as an officer or other employee of a prison; or**
- (iii) **who is employed mainly in a managerial or administrative capacity; or**
- (iv) **who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”**

26. From a combined reading of Section 2(k), Section 2(g) and Section 2(s) of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in Section 2(j) of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of Section 10 or Section 2-A of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr.Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of 2(j) of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr.Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)**.

31. **In reply**, Mr.V.G.Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore , the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr.V.G.Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) *Bangalore Water Supply and Sewerage Board vs. A.Rajappa, AIR 1978 Supreme Court 548.*
- (ii) *Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182.*
- (iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001(9) SCC 713.*
- (iv) *Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8)SCC 61: AIR 2000 SC 3116.*
- (v) *Life Insurance Corporation of India vs. R.Suresh, 2008(11) SCC 319: AIR 2008 (supp) 1887.*
- (vi) *Asha Ram vs. Divisional Engineer, Telecom Department, 2001(9) SCC 382.*
- (vii) *All India Radio vs. Santosh Kumar and Another, 1998 I CLR 684(SC).*

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of *Bombay & Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 Supreme Court 610*, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14. It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as “the primary and inalienable functions of a constitutional Government” [Vide: *Coomber v. Justices of Berks*,

(1883) 9 AC 61); and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.”

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word “Undertaking” in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of “industry” in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No.2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

“11.A corporation may, therefore, discharge a dual function” it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of “industry”

“15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry.....”

“17. The result of the discussion may be summarized thus : (1) The definition of “industry” in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act”.

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word “industry” as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department*, Item No. (iii), their Lordships observed as under:

“ Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to “fire calls”. Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

38. Similarly, examining the question with regard to *Health Department*, Item No. (ix), their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of ‘industry’ in the Act.”

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of ‘industry’. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of ‘industry’, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of ‘employees’ under the Act would certainly be entitled to the benefits of the Act.”

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of ‘industry’. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word ‘industry’. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In *Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548*, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of ‘industry’ under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) *Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry’ in that enterprise.*

(b) *Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.*

- (c) *The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.*
- (d) *If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking*

II. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.*

- (a) *'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.*

III. *Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.*

- (a) *The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).*
- (b) *A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.*
- (c) *If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.*

IV. *The dominant nature test:*

- (a) *Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.*
- (b) *Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.*
- (c) *Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).*
- (d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. *We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."*

44. *Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material*

things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In **Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182**, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

46. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of 'industry'. Hence, the Departments discharging sovereign functions are not covered within the purview of "industry" under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of "industry" and, therefore, the Irrigation Department was covered within the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001 (9) SCC 713** relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an "industry" within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

" 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot

have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in *Jagannath Maruti Kondhare* (supra) to hold that the Forest Department could be held to be “an industry”.

“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the *Jagannath Maruti Kondhare*’s case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others*, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

48. In *Agricultural Produce Market Committee vs. Ashok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in *State of Bombay and others case* (supra).

“35 In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any

interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties."

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word "industry" under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

50. Giving examples of sovereign functions, the above decision, inter-alia, mentions "taxation, eminent domain and police power".

51. In **Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a "State" within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

53. In **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an "industry". Relying upon an earlier decision in **General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767**, their Lordships of the Supreme Court held that the Telecom Department was an "industry".

54. In **All India Radio vs. Santosh Kumar and another, 1998 1 CLR 684 (SC)**, their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

"The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board etc v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term 'industry' as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date."

55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

56. In **General Manager Telecom vs. S. Srinivasa Rao and others 1997 1 LLJ 255 (SC): 1997 (8) SCC 767**, which as noted above, has been relied upon by their Lordships of the Supreme Court in **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an "industry" within the meaning of the definition of "industry" in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in

the Supreme Court decision in *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In *Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat, 2004 - III LLJ 259 (Gujarat)*, relied upon by Mr. Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in *Bangalore Water Supply and Sewerage Board’s case (supra)*, including the law falling under Articles 309 to 311 of the Constitution.

Ans. (ii) The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Section 2(j) of the Industrial Disputes Act, 1947”.

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26. In *Bangalore Water Supply & Sewerage Board’s case (supra)*, the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an “industry” within the meaning of Section 2 (j):

- (i) The activity of the enterprises is systematic;
- (ii) The activity is organized by co-operation between the employees and the employer; and
- (iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants.”

“49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e., primary inalienable function, will qualify for exemption as declared in the judgement in *Bangalore Water Supply & Sewerage Board’s case (supra)*. Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of “industry” if, and only if, such activity satisfies the triple ingredients test.”

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the

Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. *From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:*

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an “industry” within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word “industry” as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word “industry”.
- (v) If a service rendered by an individual or a private person would be an “industry” it would equally be an “industry” in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to **Article 265 of the Constitution of India** which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in **Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382**. Their Lordships of the Madras High Court quoted the following passage from the decision in **Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37**:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”

67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

68. **Entry 82 of List I (Union List) of the VII Schedule** to the Constitution of India reads as under:

“82. Taxes on Income other than Agricultural Income.”

69. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List 1 (Union List) of VII Schedule to the Constitution of India.

70. In exercise of the above power, Parliament has enacted the **Income Tax Act, 1961**. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the **Income Tax Rules, 1962**.

71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .

73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.

74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.

75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.

76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.

77. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.

78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.

79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.

80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.

81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assesseees.

82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.

83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.

84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.

85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.

86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc., are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

87. In this regard, reference may be made to a decision of the Supreme Court in *New Delhi Municipal Committee vs. State of Punjab and Others*, AIR 1997 SC 2847. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

"91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that "no tax shall be levied or collected except by authority of law." Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as "Parliament for the Union" and the State Legislatures, which are described by Art. 168 in the singular as "Legislature of a State." While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law, -

(a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) to (d)

as may be specified in law."

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that "the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State' unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that "the property and income of a State shall be exempt from Union taxation". But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to

clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States’ decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2).”

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in *Agricultural Produce Market Committee vs. Asok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned “taxation” as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word “industry” as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in *Bangalore Water Supply and Sewerage Board case (supra)*. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

- (iv) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (supra) is as under:
 - “(i) The activity of the enterprise is systematic;
 - (iv) The activity is organized by co-operation between the employees and the employer;
 - (v) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.”

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)*, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of “industry” even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple

ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in **Bangalore Water Supply and Sewerage Board case (supra)** wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of “industry”. We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of “industry”. The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be “industry”, the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of “industry” as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are

sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an “Industrial Dispute”.

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No.1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE No.2 :** Issue No.2, as noted above, is as to “whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?”

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No.2 stands disposed of accordingly.

104. **ISSUE No.3 :** Issue No.3, as noted above, is as to “whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?”

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No.3 stands disposed of accordingly.

108. **ISSUE No.4 :** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No.4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1550.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 16/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1550.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-16 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai now as shown in Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workman, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1****MUMBAI**

Present

JUSTICE S.P.MEHROTRA

Presiding Officer

APPLICATION CGIT-16 OF 2012

Parties: Pravin Bhaskar Suryawanshi : Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
2. The Commissioner of Income Tax-I, Nashik
3. The Joint Commissioner of Income Tax, Range-3, Dhule
4. The Assistant Commissioner of Income Tax,
Circle 3(1) (Administration), Dhule.
5. The Income Tax Officer, Ward No.3 (3), Dhule.
6. Chetan Enterprises, Guruwar Peth, Pune-411042

: Opposite Parties/Respondents

Appearances:

For the Applicant	:	Mr.V.G.Indrale, Adv.
For the Opposite Party Nos. 1 to 5	:	Mr.Vinod Joshi, Adv.
For the Opposite Party No. 6	:	None present.
State	:	Maharashtra

Mumbai, dated the 26th day of May, 2016**AWARD**

1.. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 27 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a Peon on daily rated basis in the Office of Income Tax Officer, Ward No.3 (3), Dhule; and that the Applicant was initially receiving daily wages @ Rs.88/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 21.6.2004 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2004; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to

the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely; Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents terminated the services of the Applicant in the evening on 2.2.2012.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 27 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents Nos.1 to 6 were duly served.

Mrs.P.S.Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents Nos. 1 to 5. However, despite service of notice, none was present for the Opposite Party/Respondent No.6 on the said date i.e. 25.5.2012.

6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents Nos.1 to 5.

7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No.6, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 6 for filing Written Statement.

8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent Nos.6 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No.6, as is evident from the perusal of the order-sheet of the case.

9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 5, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 5 (hereinafter also referred to as “the Answering Opposite Parties/ Respondents”) that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not “employer” within the meaning of the definition of “employer” under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was working as a casual labour and he was paid wages as per the statutory norms applicable; and that the

said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that the services of the Applicant were required only intermittently /as per the requirement of the Income-Tax Department; and that the Applicant was casual labour and was paid his wages for the number of days put in by him; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Applicant's services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 27 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 6, it is, inter-alia, stated that the Opposite Party /Respondent No. 6 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party /Respondent No. 6 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 6 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party Nos. 1 to 5 .

None present on behalf of the opposite party No.6

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. ***In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.***

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain **provisions of the Industrial Disputes Act 1947.**

18. **Preamble** to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. **Sub-section (1) of Section 10** of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. **Section 2A** of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1)

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”*

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of “**Industrial Dispute**” as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word “**employer**” occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “ employer” means-

(i) *in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*

(ii) *in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”*

25. The word “**Workman**” occurring in Section 2(k) of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
- (ii) who is employed in the police service or as an officer or other employee of a prison; or**
- (iii) who is employed mainly in a managerial or administrative capacity; or**
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”**

26. From a combined reading of Section 2(k), Section 2(g) and Section 2(s) of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in Section 2(j) of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of Section 10 or Section 2-A of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of 2(j) of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)**.

31. **In reply**, Mr. V.G. Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore, the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr. V.G. Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) Bangalore Water Supply and Sewerage Board vs. A.Rajappa, AIR 1978 Supreme Court 548.**

- (ii) *Des Raj vs. State of Punjab and Others*, AIR 1988 SC 1182.
- (iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar*, 2001(9) SCC 713.
- (iv) *Agricultural Produce Market Committee vs. Ashok Harikuni*, 2000(8)SCC 61: AIR 2000 SC 3116.
- (v) *Life Insurance Corporation of India vs. R.Suresh*, 2008(11) SCC 319: AIR 2008 (supp) 1887.
- (vi) *Asha Ram vs. Divisional Engineer, Telecom Department*, 2001(9) SCC 382.
- (vii) *All India Radio vs. Santosh Kumar and Another*, 1998 I CLR 684(SC).

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of *Bombay & Others vs. The Hospital Mazdoor Sabha and Others*, AIR 1960 Supreme Court 610, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14. It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as “the primary and inalienable functions of a constitutional Government” [Vide: *Coomber v. Justices of Berks*,

(1883) 9 AC 61); and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself."

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word "Undertaking" in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of "industry" in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No.2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

"11.A corporation may, therefore, discharge a dual function" it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of "industry"

"15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry....."

"17. The result of the discussion may be summarized thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act".

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word "industry" as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department*, Item No. (iii), their Lordships observed as under:

" Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to "fire calls". Private bodies also can undertake this service.....These

services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

38. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of “industry” in the Act.”

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of “industry”. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of “industry”, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of “employees” under the Act would certainly be entitled to the benefits of the Act.”

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of “industry”. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word “industry”. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In *Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548*, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of “industry” under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) *prima facie*, there is an 'industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (*supra*), although not trade or business, may still be 'industry' provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (*supra*), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi* case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).

(d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. *We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."*

44. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In *Des Raj vs. State of Punjab and Others*, AIR 1988 SC 1182, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

46. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of 'industry'. Hence, the Departments discharging sovereign functions are not covered within the purview of "industry" under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of "industry" and, therefore, the Irrigation Department was covered within the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In *State of Gujarat vs. Pratamsingh Narsinh Parmar*, 2001 (9) SCC 713 relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an "industry" within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set-aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

"5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be

an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra) to hold that the Forest Department could be held to be “an industry”.

“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the Jagannath Maruti Kondhare’s case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

48. In **Agricultural Produce Market Committee vs. Ashok Harikuni**, 2000(8) SCC 61: AIR 2000 SC 3116, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in State of Bombay and others case (supra).

“35 In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties.”

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

50. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.

51. In **Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

53. In **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in **General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767**, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.

54. In **All India Radio vs. Santosh Kumar and another, 1998 1 CLR 684** (SC), their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

“The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board etc v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term ‘industry’ as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.”

55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

56. In *General Manager Telecom vs. S. Srinivasa Rao and others* 1997 1 LLJ 255 (SC): 1997 (8) SCC 767, which as noted above, has been relied upon by their Lordships of the Supreme Court in *Asha Ram vs. Divisional Engineer, Telecom Department*, 2001 (9) SCC 382, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an “industry” within the meaning of the definition of “industry” in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In *Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat*, 2004 - III LLJ 259 (Gujarat), relied upon by Mr.Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in *Bangalore Water Supply and Sewerage Board’s case* (supra), including the law falling under Articles 309 to 311 of the Constitution.

Ans. (ii) The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Section 2(j) of the Industrial Disputes Act, 1947”.

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26.In *Bangalore Water Supply & Sewerage Board’s case* (supra), the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an “industry” within the meaning of Section 2 (j):

(i) The activity of the enterprises is systematic;

(ii) The activity is organized by co-operation between the employees and the employer; and

(iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants.”

“49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and

services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e., primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board's case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of "industry" if, and only if, such activity satisfies the triple ingredients test."

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. ***From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:***

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an "industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word "industry" as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word "industry".
- (v) If a service rendered by an individual or a private person would be an "industry" it would equally be an "industry" in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to **Article 265 of the Constitution of India** which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in **Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382**. Their Lordships of the Madras High Court quoted the following passage from the decision in **Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37**:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen. And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”

67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

68. **Entry 82 of List I (Union List) of the VII Schedule** to the Constitution of India reads as under:

“82. Taxes on Income other than Agricultural Income.”

69. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List I (Union List) of VII Schedule to the Constitution of India.

70. In exercise of the above power, Parliament has enacted the **Income Tax Act, 1961**. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the **Income Tax Rules, 1962**.

71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income.

73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.

74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.

75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.

76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.

77. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.
78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.
79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.
80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.
81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assessees.
82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.
83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.
84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.
85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.
86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.
87. In this regard, reference may be made to a decision of the Supreme Court in **New Delhi Municipal Committee vs. State of Punjab and Others, AIR 1997 SC 2847**. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

“91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that “no tax shall be levied or collected except by authority of law.” Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as “Parliament for the Union” and the State Legislatures, which are described by Art. 168 in the singular as “Legislature of a State.” While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law,-

(a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) to (d)

as may be specified in law.”

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that “the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State’ unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that “the property and income of a State shall be exempt from Union taxation”. But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States’ decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2).”

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in *Agricultural Produce Market Committee vs. Asok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned “taxation” as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word “industry” as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in *Bangalore Water Supply and Sewerage Board case (supra)*. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

(A) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (*supra*) is as under:

- “(i) *The activity of the enterprise is systematic;*
- (ii) *The activity is organized by co-operation between the employees and the employer;*
- (iv) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.”*

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers UNI case** (*supra*), their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of “industry” even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in **Bangalore Water Supply and Sewerage Board case** (*supra*) wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (*supra*). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in Bangalore Water Supply and Sewerage Board case (*supra*) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (*supra*) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (*supra*). In the City of Nagpur Corporation case (*supra*), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not

make it any the less a service coming under the definition of "industry". We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry", it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act.

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of "industry". The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be "industry", the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of "industry" as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an "Industrial Dispute".

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No.1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE NO.2:** Issue No.2, as noted above, is as to "whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?"

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No.2 stands disposed of accordingly.

104. **ISSUE NO.3:** Issue No.3, as noted above, is as to "whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?"

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No.3 stands disposed of accordingly.

108. **ISSUE No. 4:** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No.4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1551.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 17/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-17 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai now as shown in Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workman, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1

MUMBAI

Present

JUSTICE S.P. MEHROTRA : Presiding Officer

APPLICATION CGIT-17 OF 2012

Parties : Tushar Shrikrishna More

... Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
2. The Commissioner of Income Tax-I, Nashik
3. The Joint Commissioner of Income Tax, Range-3, Dhule
4. The Assistant Commissioner of Income Tax, Circle 3(1) (Administration), Dhule.
5. The Income Tax Officer, Ward No.3 (4), Dhule.

6. Chetan Enterprises, Guruwar Peth, Pune-411042

...Opposite Parties/Respondents

Appearances:

For the Applicant : Mr.V.G.Indrale, Adv.

For the Opposite Party Nos. 1 to 5 : Mr.Vinod Joshi, Adv.

For the Opposite Party No. 6 : None present.

State : Maharashtra

Mumbai, dated the 26th day of May, 2016

AWARD

1. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 26 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a on daily rated basis in the Office of Income Tax Officer, Ward No.3 (4), Dhule; and that the Applicant was initially receiving daily wages @ Rs.18/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 28.4.2004 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2005; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely; Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents terminate the services of the Applicant in the evomg pm 2.2.2012.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 26 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents No.1 to 6 were duly served.

Mrs. P. S.Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents No. 1 to 5. However, despite service of notice, none was present for the Opposite Party/Respondent No. 6 on the said date i.e. 25.5.2012.

6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents No. 1 to 5.

7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No. 6, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 6 for filing Written Statement.

8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent No. 6 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No. 6, as is evident from the perusal of the order-sheet of the case.

9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 5, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 5 (hereinafter also referred to as “the Answering Opposite Parties/ Respondents”) that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not “employer” within the meaning of the definition of “employer” under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was earlier working as a casual labour and he was paid as per the statutory norms applicable; and that the said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that later the Applicant was intermittently doing the work of Data Entry of Income Tax Returns in the Computer system when his services were required by the Department; and that the Applicant was being paid based on the number of Returns whose data was entered into the computer by him at prescribed rates; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Applicant’s services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Contractor has been appointed for unskilled labour whereas the Applicant is doing a different work which is Data Entry of Returns. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 26 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 6, it is, inter-alia, stated that the Opposite Party /Respondent No. 6 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party /Respondent No. 6 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 6 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*

(3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/ Record Keeper and is entitled to all the benefits including the arrears of pay?*

(4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G. Indrale, Adv. present on behalf of the applicant.

Mrs. P.S. Shetty, Adv. present on behalf of the opposite party No. 1 to 5 .

None present on behalf of the opposite party no.6

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. *In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.*

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain *provisions of the Industrial Disputes Act 1947.*

18. **Preamble** to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. **Sub-section (1) of Section 10** of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. **Section 2A** of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal,

retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of **“Industrial Dispute”** as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word **“employer”** occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “ employer” means-

(i) **in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;**

(ii) **in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”**

25. The word **“Workman”** occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) **who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**

(ii) **who is employed in the police service or as an officer or other employee of a prison; or**

(iii) **who is employed mainly in a managerial or administrative capacity; or**

(iv) **who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”**

26. From a combined reading of **Section 2(k)**, **Section 2(g)** and **Section 2(s)** of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in **Section 2(j)** of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of **Section 10** or **Section 2-A** of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in **Section 2(j)** of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of 2(j) of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)*.

31. *In reply*, Mr. V.G. Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore, the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr. V.G. Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) *Bangalore Water Supply and Sewerage Board vs. A.Rajappa, AIR 1978 Supreme Court 548.*
- (ii) *Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182.*
- (iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001(9) SCC 713.*
- (iv) *Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8)SCC 61: AIR 2000 SC 3116.*
- (v) *Life Insurance Corporation of India vs. R.Suresh, 2008(11) SCC 319: AIR 2008 (supp) 1887.*
- (vi) *Asha Ram vs. Divisional Engineer, Telecom Department, 2001(9) SCC 382.*
- (vii) *All India Radio vs. Santosh Kumar and Another, 1998 I CLR 684(SC).*

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of *Bombay & Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 Supreme Court 610*, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14. It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as “the primary and inalienable functions of a constitutional Government” [Vide: Coomber v. Justices of Berks, (1883) 9 AC 61]; and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.”

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word “Undertaking” in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of “industry” in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No. 2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

“11.A corporation may, therefore, discharge a dual function” it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of “industry”

“15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry.....”

“17. The result of the discussion may be summarized thus : (1) The definition of “industry” in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry

within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act”.

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word “industry” as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department, Item No. (iii)*, their Lordships observed as under:

“ Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to “fire calls”. Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

38. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of “industry” in the Act.”.

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of “industry”. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of “industry”, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of “employees” under the Act would certainly be entitled to the benefits of the Act.”

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of “industry”. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word “industry”. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In **Bangalore Water Supply and Sewerage Board v. A.Rajappa**, AIR 1978 SC 548, relied upon by Mr. V.G. Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of “industry” under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in *Banerji* (AIR 1953 SC 58) has a wide import.

- (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) *prima facie*, there is an industry’ in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) ‘Undertaking’ must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be ‘industry’ provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold ‘industry’ undertakings, callings and services, adventures ‘analogous to the carrying on of trade or business.’ All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

- (a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).
- (b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.
- (c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and

servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.

IV. *The dominant nature test:*

- (a) *Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.*
- (b) *Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.*
- (c) *Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).*
- (d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. *We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."*

44. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In ***Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182***, relied upon by Mr.V.G. Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

46. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of 'industry'. Hence, the Departments discharging sovereign functions are not covered within the purview of "industry" under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main

functions of Irrigation Department come within the ambit of “industry” and, therefore, the Irrigation Department was covered within the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001 (9) SCC 713** relied upon by Mr.V.G. Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an “industry” within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

“ 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra) to hold that the Forest Department could be held to be “an industry”.

“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the Jagannath Maruti Kondhare’s case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

48. In **Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. *SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in State of Bombay and others case (supra).*

“35 *In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the predominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties.”*

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

50. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.

51. In ***Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319***, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

53. In ***Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382***, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in ***General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767***, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.

54. In ***All India Radio vs. Santosh Kumar and another, 1998 1 CLR 684 (SC)***, their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

“The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board etc v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term ‘industry’ as

defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.”

55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

56. In **General Manager Telecom vs. S. Srinivasa Rao and others 1997 1 LLJ 255 (SC): 1997 (8) SCC 767**, which as noted above, has been relied upon by their Lordships of the Supreme Court in *Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382*, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an “industry” within the meaning of the definition of “industry” in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in *Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548*, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In **Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat, 2004 - III LLJ 259 (Gujarat)**, relied upon by Mr.Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in *Bangalore Water Supply and Sewerage Board's case (supra)*, including the law falling under Articles 309 to 311 of the Constitution.

Ans. (ii) The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Section 2(j) of the Industrial Disputes Act, 1947”.

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26. In *Bangalore Water Supply & Sewerage Board's case (supra)*, the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was *prima facie* an “industry” within the meaning of Section 2 (j):

- (i) *The activity of the enterprises is systematic;*
- (ii) *The activity is organized by co-operation between the employees and the employer; and*
- (iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants."*

"49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e, primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board's case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of "industry" if, and only if, such activity satisfies the triple ingredients test."

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. ***From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:***

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an "industry" within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word "industry" as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word "industry".
- (v) If a service rendered by an individual or a private person would be an "industry" it would equally be an "industry" in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to *Article 265 of the Constitution of India* which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in *Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382*. Their Lordships of the Madras High Court quoted the following passage from the decision in *Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37*:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”

67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

68. *Entry 82 of List I (Union List) of the VII Schedule* to the Constitution of India reads as under:

“82. Taxes on Income other than Agricultural Income.”

69. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List 1 (Union List) of VII Schedule to the Constitution of India.

70. In exercise of the above power, Parliament has enacted the *Income Tax Act, 1961*. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the *Income Tax Rules, 1962*.

71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .

73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.

74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.

75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.

76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.

77. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.
78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.
79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.
80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.
81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assesseees.
82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.
83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.
84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.
85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.
86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.
87. In this regard, reference may be made to a decision of the Supreme Court in **New Delhi Municipal Committee vs. State of Punjab and Others, AIR 1997 SC 2847**. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:
- “91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that “no tax shall be levied or collected except by authority of law.” Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as “Parliament for the Union” and the State Legislatures, which are described by Art. 168 in the singular as “Legislature of a State.” While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:*
- : 243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law, - authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;*
- (d) to (d)*
- as may be specified in law.”*

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that “the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State’ unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that “the property and income of a State shall be exempt from Union taxation”. But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States’ decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2).”

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in *Agricultural Produce Market Committee vs. Asok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned “taxation” as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word “industry” as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in *Bangalore Water Supply and Sewerage Board case (supra)*. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

(A) As noted earlier, the triple ingredients test laid down in *Bangalore Water Supply and Sewerage Board case (supra)* is as under:

- “(i) *The activity of the enterprise is systematic;*
- (ii) *The activity is organized by co-operation between the employees and the employer;*
- (iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.”*

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)**, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of “industry” even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G. Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in **Bangalore Water Supply and Sewerage Board case (supra)** wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of “industry”. We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the

case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act."

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of "industry". The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be "industry", the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of "industry" as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an "Industrial Dispute".

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No. 1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE NO. 2 :** Issue No.2, as noted above, is as to "whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?"

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No. 2 stands disposed of accordingly.

104. **ISSUE NO. 3:** Issue No.3, as noted above, is as to "whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?"

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No 3 stands disposed of accordingly.

108. **ISSUE NO. 4 :** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No. 4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1552.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 18/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-18 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai now as shown in Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workmen, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present : JUSTICE S.P.MEHROTRA, Presiding Officer

APPLICATION CGIT-18 OF 2012

Parties : Harshad Suresh Deo

...Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
2. The Commissioner of Income Tax-I, Nashik
3. The Joint Commissioner of Income Tax, Range-3, Dhule
4. The Assistant Commissioner of Income Tax,
Circle 3(1) (Administration), Dhule.
5. The Income Tax Officer, Ward No.3 (4), Dhule.
6. Chetan Enterprises, Guruwar Peth, Pune-411042

...Opposite Parties/Respondents

Appearances:

For the Applicant : Mr.V.G.Indrale, Adv.
For the Opposite Party Nos. 1 to 5 : Mr.Vinod Joshi, Adv.
For the Opposite Party No. 6 : None present.
State : Maharashtra

Mumbai, dated the 26th day of May, 2016

AWARD

1.. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 26 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a Data Entry Operator and Typist/Computer Operator on daily rated basis in the Office of Income Tax Officer, Ward No.3 (4), Dhule; and that the Applicant was initially receiving daily wages @ Rs.119/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 11.4.2005 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2005; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely; Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents are intending to terminate the services of the Applicant.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 26 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents No.1 to 6 were duly served.

Mrs.P.S. Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents No. 1 to 5. However, despite service of notice, none was present for the Opposite Party/Respondent No.6 on the said date i.e. 25.5.2012.

6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents No.1 to 5.

7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No.6, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 6 for filing Written Statement.

8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent No.6 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No.6, as is evident from the perusal of the order-sheet of the case.

9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 5, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 5 (hereinafter also referred to as "the Answering Opposite Parties/ Respondents") that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of "industry" under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not "employer" within the meaning of the definition of "employer" under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was earlier working as a casual labour and he was paid as per the statutory norms applicable; and that the said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that later the Applicant was intermittently doing the work of Data Entry of Income Tax Returns in the Computer system when his services were required by the Department; and that the Applicant was being paid based on the number of Returns whose data was entered into the computer by him at prescribed rates; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Applicant’s services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties/Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Contractor has been appointed for unskilled labour whereas the Applicant is doing a different work which is Data Entry of Returns. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 26 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 6, it is, inter-alia, stated that the Opposite Party/Respondent No. 6 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party/Respondent No. 6 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 6 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/ Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party No. 1 to 5 .

None present on behalf of the opposite party no.6

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. *In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.*

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain *provisions of the Industrial Disputes Act 1947*.

18. *Preamble* to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. *Sub-section (1) of Section 10* of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. *Section 2A* of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of “*Industrial Dispute*” as contained in *Section 2(k)* of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word ***“employer”*** occurring in ***Section 2(k)*** of the Industrial Disputes Act, 1947 is defined in ***Section 2(g)*** of the said Act as follows:

“2 (g) “ employer” means-

(i) in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

25. The word ***“Workman”*** occurring in ***Section 2(k)*** of the Industrial Disputes Act, 1947 is defined in ***Section 2(s)*** of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

26. From a combined reading of ***Section 2(k)***, ***Section 2(g)*** and ***Section 2(s)*** of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in ***Section 2(j)*** of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of ***Section 10*** or ***Section 2-A*** of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in ***Section 2(j)*** of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of ***Section 2(j)*** of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of ***Section 2(j)*** of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under ***Section 2(j)*** of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of ***2(j)*** of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in ***Section 2(k)*** of the Industrial Disputes Act, 1947. Neither Reference under ***Section 10*** of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under ***Section 2A(2)*** of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr.Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj).**

31. **In reply**, Mr.V.G.Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore , the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr.V.G.Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) **Bangalore Water Supply and Sewerage Board vs. A.Rajappa, AIR 1978 Supreme Court 548.**
- (ii) **Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182.**
- (iii) **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001(9) SCC 713.**
- (iv) **Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8)SCC 61: AIR 2000 SC 3116.**
- (v) **Life Insurance Corporation of India vs. R.Suresh, 2008(11) SCC 319: AIR 2008 (supp) 1887.**
- (vi) **Asha Ram vs. Divisional Engineer, Telecom Department, 2001(9) SCC 382.**
- (vii) **All India Radio vs. Santosh Kumar and Another, 1998 I CLR 684(SC).**

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of **Bombay & Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 Supreme Court 610**, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16.In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17.We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14.It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the

Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as "the primary and inalienable functions of a constitutional Government" [Vide: Coomber v. Justices of Berks, (1883) 9 AC 61]; and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself."

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word "Undertaking" in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of "industry" in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No.2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

"11.A corporation may, therefore, discharge a dual function" it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of "industry"

"15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry....."

"17. The result of the discussion may be summarized thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act".

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word "industry" as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department, Item No. (iii)*, their Lordships observed as under:

"Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the

duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to "fire calls". Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry"

38. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

"This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of "industry" in the Act."

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

"The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of "industry". Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry"

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

"This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of "industry", satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry"

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

"This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of "employees" under the Act would certainly be entitled to the benefits of the Act."

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of "industry". It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word "industry". It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In *Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548*, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of "industry" under the Industrial Disputes Act, 1947:

"161. 'Industry', as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) *prima facie*, there is an 'industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in *Banerji* and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi* case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

44. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In ***Des Raj vs. State of Punjab and Others*, AIR 1988 SC 1182**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

46. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of 'industry'. Hence, the Departments discharging sovereign functions are not covered within the purview of "industry" under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of "industry" and, therefore, the Irrigation Department was covered within the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In ***State of Gujarat vs. Pratamsingh Narsinh Parmar*, 2001 (9) SCC 713** relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an "industry" within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set-aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

" 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was

discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra) to hold that the Forest Department could be held to be "an industry".

"6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in the Jagannath Maruti Kondhare's case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed."

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an "industry" and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an "industry", to give positive facts for coming to the conclusion that it constitutes an "industry". Their Lordships have emphasized that in the absence of requisite pleadings the decision in Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an "industry"

48. In **Agricultural Produce Market Committee vs. Ashok Harikuni**, 2000(8) SCC 61: AIR 2000 SC 3116, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an "industry" as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

"32. SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of 'sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of "industry" as also in State of Bombay and others case (supra).

"35 In view of the aforesaid settled legal principle the width of "industry" being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the predominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of "industry" under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are 'workman' under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties."

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.
50. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.
51. In *Life Insurance Corporation of India vs. R.Suresh*, 2008 (11) SCC 319, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.
52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.
53. In *Asha Ram vs. Divisional Engineer, Telecom Department*, 2001 (9) SCC 382, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in *General Manager, Telecom vs. S. Srinivas Rao and Others*, 1997 (8) SCC 767, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.
54. In *All India Radio vs. Santosh Kumar and another*, 1998 1 CLR 684 (SC), their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:
- “The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term ‘industry’ as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.”*
55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.
56. In *General Manager Telecom vs. S. Srinivasa Rao and others* 1997 1 LLJ 255 (SC): 1997 (8) SCC 767, which as noted above, has been relied upon by their Lordships of the Supreme Court in *Asha Ram vs. Divisional Engineer, Telecom Department*, 2001 (9) SCC 382, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an “industry” within the meaning of the definition of “industry” in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the

word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In *Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat, 2004 - III LLJ 259 (Gujarat)*, relied upon by Mr. Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) *The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board’s case (supra), including the law falling under Articles 309 to 311 of the Constitution.*

Ans. (ii) *The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Section 2(j) of the Industrial Disputes Act, 1947”.*

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26. In *Bangalore Water Supply & Sewerage Board’s case (supra)*, the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an “industry” within the meaning of Section 2 (j):

(i) *The activity of the enterprises is systematic;*

(ii) *The activity is organized by co-operation between the employees and the employer; and*

(iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants.”*

“49. *When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e, primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board’s case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of “industry” if, and only if, such activity satisfies the triple ingredients test.”*

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. ***From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:***

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an “industry” within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word “industry” as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word “industry”.
- (v) If a service rendered by an individual or a private person would be an “industry” it would equally be an “industry” in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. ***Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.***

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to **Article 265 of the Constitution of India** which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in **Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382**. Their Lordships of the Madras High Court quoted the following passage from the decision in **Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37**:

“27.Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:
- “30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen. And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”*
67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.
68. **Entry 82 of List I (Union List) of the VII Schedule** to the Constitution of India reads as under:
- “82. Taxes on Income other than Agricultural Income.”*
69. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List 1 (Union List) of VII Schedule to the Constitution of India.
70. In exercise of the above power, Parliament has enacted the **Income Tax Act, 1961**. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the **Income Tax Rules, 1962**.
71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.
72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .
73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.
74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.
75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.
76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.
77. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.
78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.
79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.
80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.
81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assessee.
82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.
83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.
84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.
85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.
86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for

levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

87. In this regard, reference may be made to a decision of the Supreme Court in *New Delhi Municipal Committee vs. State of Punjab and Others*, AIR 1997 SC 2847. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

“91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that “no tax shall be levied or collected except by authority of law.” Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as “Parliament for the Union” and the State Legislatures, which are described by Art. 168 in the singular as “Legislature of a State.” While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law, -

(a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) to (d)

as may be specified in law.”

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that “the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State’ unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that “the property and income of a State shall be exempt from Union taxation”. But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt*

Act, 1944, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States' decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2)."

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in ***Agricultural Produce Market Committee vs. Asok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116***, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned "taxation" as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word "industry" as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in ***Bangalore Water Supply and Sewerage Board case (supra)***. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

(a) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (supra) is as under:

“(i) The activity of the enterprise is systematic;

(ii) The activity is organized by co-operation between the employees and the employer;

(iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.”

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in ***Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)***, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of "industry" even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple

ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in **Bangalore Water Supply and Sewerage Board case (supra)** wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of “industry”. We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of “industry”. The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be “industry”, the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of “industry” as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are

sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an “Industrial Dispute”.

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No.1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE NO.2 :** Issue No.2, as noted above, is as to “whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?”

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No.2 stands disposed of accordingly.

104. **ISSUE NO.3:** Issue No.3, as noted above, is as to “whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?”

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No.3 stands disposed of accordingly.

108. **ISSUE No. 4:** Issue No. 4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No.4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1553.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1 मुम्बई के पंचाट (संदर्भ सं. सीजीआईटी/19/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-19 of 2012) of the Central Government Industrial Tribunal-Cum-Labour-Court No. 1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workman, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present

JUSTICE S.P. MEHROTRA, Presiding Officer

APPLICATION CGIT-19 OF 2012

Parties : Shailesh Yamaji Dhatrak : Applicant

Vs.

1. The Chief Commissioner of Income Tax, Nashik.
2. The Commissioner of Income Tax -I, Nashik
3. The Joint Commissioner of Income Tax, Range -3, Dhule.
4. The Assistant Commissioner of Income Tax, Circle 3 (1) [Administration], Dhule.
5. Chetan Enterprises, Pune.

: Opposite Parties/Respondents

Appearances:

For the Applicant	:	Mr.V.G. Indrale, Adv.
For the Opposite Party Nos. 1 to 4	:	Mr.Vinod Joshi, Adv.
For the Opposite Party No. 5	:	None present.
State	:	Maharashtra

Mumbai, dated the 26th May 2016

AWARD

1.. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 26 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a Computer Operator on daily rated basis in the Office of Joint Commissioner of Income Tax, Range-3, Dhule; and that the Applicant was initially receiving daily wages @ Rs.144/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 19.5.2008 till date; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of

fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2009; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the service conditions of the Applicant are transferred from the Income Tax Department to the private contractor namely; Chetan Enterprises, Pune for awarding contract for Unskilled Labour for one year with the approval of Chief Commissioner of Income Tax, Nasik in total disregard to the provisions of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents are intending to terminate the services of the Applicant.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 26 of the said Application including the relief for directing the Respondents to reinstate the Applicant with payment of full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents No.1 to 5 were duly served.

Mrs.P.S.Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents No. 1 to 4. However, despite service of notice, none was present for the Opposite Party/Respondent No.5 on the said date i.e. 25.5.2012.

6. On 2.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents No.1 to 4.

7. On 31.8.2012, as noted in the Order passed on the said date, appearance was put in on behalf of the Opposite Party/Respondent No.5, and prayer was made for time for filing Written Statement. Time was accordingly granted to the Opposite Party/Respondent No. 5 for filing Written Statement.

8. On 13.9.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Party/Respondent No.5 also. It may be noted that after filing Written Statement on 13.9.2012, none has been appearing on behalf of the Respondent/Opposite Party No.5, as is evident from the perusal of the order-sheet of the case.

9. In the **Written Statement dated 2.8.2012**, filed on behalf of the Opposite Parties /Respondents No. 1 to 4, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 4 (hereinafter also referred to as "the Answering Opposite Parties/ Respondents") that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of "industry" under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not "employer" within the meaning of the definition of "employer" under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

10. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not "workman" in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of "industry" in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not

maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

11. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was working as a casual labour and he was paid as per the statutory norms applicable; and that the said payments were made by the Answering Opposite Parties/Respondents and also revised by the Department in terms of the guidelines issued by the Central Government; and that the services of the Applicant were required only intermittently as per requirement of the Income-tax Department; and that the Applicant was casual labour and was paid his wages for the number of days put in by him; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Applicant's services were required only intermittently and hence he could not have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper; and that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or fill the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that as the Applicant was not inducted in the regular post, he cannot claim and is not entitled for regularization of his services. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 26 of the aforesaid Application.

12. In the **Written Statement dated 13.9.2012**, filed on behalf of the Opposite Party/Respondent No. 5, it is, inter-alia, stated that the Opposite Party /Respondent No. 5 is a Proprietorship Concern providing Services of Contract Labour to various Government Organizations; and that the Opposite Party /Respondent No. 5 was awarded the Labour Contract and in terms of the said Contract an Agreement was made and signed at Nasik on 1.12.2011 between the Opposite Party/Respondent No. 5 and the Commissioner of Income Tax – 1, Nasik for providing contract labour for House-Keeping, cleaning, sweeping, dusting, etc., for the Offices and buildings of the Income Tax Department at Nasik, Malegaon, and Dhule; and that the Agreement is effective from 1st December 2011 to 30.11.2012.

ISSUES:

13. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*
- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/ Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

14. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party No. 1 to 4 .

None present on behalf of the opposite party no.5

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

15. ***In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.***

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

16. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

17. In order to appreciate the above Issue, it is necessary to refer to certain *provisions of the Industrial Disputes Act 1947*.

18. **Preamble** to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

19. **Sub-section (1) of Section 10** of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

20. **Section 2A** of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

21. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

22. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

23. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of “**Industrial Dispute**” as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

24. The word “**employer**” occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “ employer” means-

- (i) *in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*
- (ii) *in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”*

25. The word “*Workman*” occurring in Section 2(k) of the Industrial Disputes Act, 1947 is defined in *Section 2(s)* of the said Act as under:

“2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) *who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) *who is employed mainly in a managerial or administrative capacity; or*
- (iv) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”*

26. From a combined reading of Section 2(k), Section 2(g) and Section 2(s) of the Industrial Disputes Act, 1947, it is evident that the word “employer” and the word “workman” are to be understood in the context of “industry”. In other words, “industrial dispute” is basically dispute between an “employer” in relation to an industry and the “workman” working in such industry.

27. The word ‘industry’ is defined in Section 2(j) of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

28. Hence, it is evident that the dispute in order to be the subject-matter of Section 10 or Section 2-A of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

29. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of 2(j) of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

30. Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)*.

31. *In reply*, Mr.V.G.Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore, the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

32. Mr.V.G.Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

(i) *Bangalore Water Supply and Sewerage Board vs. A.Rajappa*, AIR 1978 Supreme Court 548.

(ii) *Des Raj vs. State of Punjab and Others*, AIR 1988 SC 1182.

(iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar*, 2001(9) SCC 713.

(iv) *Agricultural Produce Market Committee vs. Ashok Harikuni*, 2000(8)SCC 61: AIR 2000 SC 3116.

(v) *Life Insurance Corporation of India vs. R.Suresh*, 2008(11) SCC 319: AIR 2008 (supp) 1887.

(vi) *Asha Ram vs. Divisional Engineer, Telecom Department*, 2001(9) SCC 382.

(vii) *All India Radio vs. Santosh Kumar and Another*, 1998 I CLR 684(SC).

33. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

34. In the State of *Bombay & Others vs. The Hospital Mazdoor Sabha and Others*, AIR 1960 Supreme Court 610, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16.In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17.We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

“14.It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and

the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as "the primary and inalienable functions of a constitutional Government" [Vide: Coomber v. Justices of Berks, (1883) 9 AC 61]; and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself."

35. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word "Undertaking" in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

36. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of "industry" in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No.2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

"11.A corporation may, therefore, discharge a dual function" it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of "industry"

"15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry....."

"17. The result of the discussion may be summarized thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act".

37. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word "industry" as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department, Item No. (iii)*, their Lordships observed as under:

"Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to "fire calls".

Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

38. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of “industry” in the Act.”

39. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of “industry”. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

40. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are such that they can equally be done by private individuals and they come under the definition of “industry”, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

41. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of “employees” under the Act would certainly be entitled to the benefits of the Act.”

42. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of “industry”. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word “industry”. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

43. In *Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548*, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of “industry” under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or

services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry' in that enterprise.

(b) *Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.*

(c) *The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.*

(d) *If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking*

II. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.*

(a) *'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.*

III. *Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.*

(a) *The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).*

(b) *A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.*

(c) *If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.*

IV. *The dominant nature test:*

(a) *Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.*

(b) *Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.*

(c) *Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).*

(d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. *We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."*

44. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that

enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of “industry” but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

45. In **Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an “industry” under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of “industry” under the Industrial Disputes Act, 1947. Their Lordships held as under:

“The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of “industry”. We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry”.

46. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of ‘industry’. Hence, the Departments discharging sovereign functions are not covered within the purview of “industry” under Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of “industry” and, therefore, the Irrigation Department was covered within the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

47. In **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001 (9) SCC 713** relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an “industry” within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set-aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

“ 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this

Court in *Jagannath Maruti Kondhare (supra)* to hold that the Forest Department could be held to be “an industry”.

“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the *Jagannath Maruti Kondhare’s* case (*supra*), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others, (supra)* cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

48. In *Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116*, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in *State of Bombay and others case (supra)*.

“35 In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the predominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties.”

49. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

50. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.

51. In **Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

52. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

53. In **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in **General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767**, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.

54. In **All India Radio vs. Santosh Kumar and another, 1998 1 CLR 684 (SC)**, their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

“The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board v. A Rajappa and Others etc. reported in (1978) 2 SCC 213, save and except the sovereign function, all other activities of employers would be covered within the sweep of term ‘industry’ as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.”

55. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

56. In **General Manager Telecom vs. S. Srinivasa Rao and others 1997 1 LLJ 255 (SC): 1997 (8) SCC 767**, which as noted above, has been relied upon by their Lordships of the Supreme Court in **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an “industry” within the meaning of the definition of “industry” in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in **Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548**, their Lordships concluded that the Telecom Department of the Union of India was an “industry” within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

57. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

58. In *Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat*, 2004 - III LLJ 259 (Gujarat), relied upon by Mr. Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to “Whether the Forest Department and the Irrigation Department of the State can be said to be an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”. Their Lordships of the Gujarat High Court held as under:

“Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?”

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) *The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board’s case (supra), including the law falling under Articles 309 to 311 of the Constitution.*

Ans. (ii) *The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry” under Section 2(j) of the Industrial Disputes Act, 1947”.*

59. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26. In Bangalore Water Supply & Sewerage Board’s case (supra), the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an “industry” within the meaning of Section 2 (j):

- (i) *The activity of the enterprises is systematic;*
- (ii) *The activity is organized by co-operation between the employees and the employer; and*
- (iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants.”*

“49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e, primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board’s case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of “industry” if, and only if, such activity satisfies the triple ingredients test.”

60. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

61. *From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:*

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an “industry” within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word “industry” as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word “industry”.
- (v) If a service rendered by an individual or a private person would be an “industry” it would equally be an “industry” in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.
- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

62. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

63. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

64. In order to consider the above question, it is necessary to refer to **Article 265 of the Constitution of India** which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

65. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in **Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382**. Their Lordships of the Madras High Court quoted the following passage from the decision in **Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37**:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

66. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process

of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law."

67. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

68. **Entry 82 of List I (Union List) of the VII Schedule** to the Constitution of India reads as under:

"82.Taxes on Income other than Agricultural Income."

69. It will thus be seen that Parliament has been given power in respect of "taxes on Income other than Agricultural Income" in view of Article 82 of List 1 (Union List) of VII Schedule to the Constitution of India.

70. In exercise of the above power, Parliament has enacted the **Income Tax Act, 1961**. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the **Income Tax Rules, 1962**.

71. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

72. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .

73. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with "Incomes which do not form part of Total Income".

74. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with "Computation of Total Income".

75. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with "Income of Other Persons, included in Assessee's Total Income".

76. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with "Deductions to be made in computing Total Income".

77. Chapter XIII of the Income Tax Act, 1961 deals with the "Income Tax Authorities".

78. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with "Appointment and Control" of the Income Tax Authorities.

79. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with "Jurisdiction" of the Income-Tax Authorities.

80. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with "Powers" of the Income Tax Authorities.

81. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with "disclosure of information" respecting assessees.

82. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with "Procedure for Assessment".

83. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with "Collection and Recovery of Tax".

84. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with "Penalties Imposable" for various defaults under the Income-Tax Act, 1961.

85. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with "Offences and Prosecutions".

86. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax

Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

87. In this regard, reference may be made to a decision of the Supreme Court in *New Delhi Municipal Committee vs. State of Punjab and Others*, AIR 1997 SC 2847. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

"91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that "no tax shall be levied or collected except by authority of law." Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as "Parliament for the Union" and the State Legislatures, which are described by Art. 168 in the singular as "Legislature of a State." While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law, -

- (a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) to (d) as may be specified in law."

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that "the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State' unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that "the property and income of a State shall be exempt from Union taxation". But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression "property" occurring in this article. Expression "property" is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or

(d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States' decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2)."

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

88. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

89. It is also note-worthy that in *Agricultural Produce Market Committee vs. Asok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned "taxation" as a sovereign function.

90. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word "industry" as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in *Bangalore Water Supply and Sewerage Board case (supra)*. He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

91. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

(A) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (supra) is as under:

- “(i) The activity of the enterprise is systematic;
- (ii) The activity is organized by co-operation between the employees and the employer;
- (iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes

92. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)*, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of "industry" even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

93. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

94. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in *Bangalore Water Supply and Sewerage Board case (supra)* wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in

Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

95. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i) Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of “industry”. We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

96. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of “industry”. The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

97. (3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be “industry”, the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of “industry” as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

98. Hence, the dispute sought to be raised by the Applicant in the present Application is not an “Industrial Dispute”.

99. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

100. **Issue No. 1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

101. **ISSUE NO.2:** Issue No.2, as noted above, is as to “whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?”

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

102. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

103. Issue No.2 stands disposed of accordingly.

104. **ISSUE NO.3:** Issue No.3, as noted above, is as to “whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?”

105. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

106. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

107. Issue No.3 stands disposed of accordingly.

108. **ISSUE NO.4:** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

109. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

110. Issue No.4 stands disposed of accordingly.

111. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

112. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

113. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1554.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इनकम टैक्स डिपार्टमेंट के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ सं. सीजीआईटी/20/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. CGIT-20 of 2012) of the Central Government Industrial Tribunal-cum-Labour-Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Income Tax Department and their workman, which was received by the Central Government on 21.07.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1****MUMBAI****Present :** JUSTICE S.P. MEHROTRA, Presiding OfficerAPPLICATION CGIT-20 OF 2012Parties: Baban S/o Wamanrao Wagh

: Applicant

Vs.

1. The Director General of Income Tax (INV), Pune.
2. The Director of Income Tax (INV), Nagpur
3. Joint Director of Income Tax (INV), Nasik
4. Assistant Director of Income Tax (INV), Aurangabad

: Opposite Parties/Respondents

Appearances:

For the Applicant : Mr. V.G. Indrale, Adv.

For the Opposite Party Nos. 1 to 4 : Mr. Vinod Joshi, Adv.

State : Maharashtra

Mumbai, dated the 26th day of May, 2016**AWARD**

1. The present **Application** purporting to be under Section 2A (2) of the Industrial Disputes Act, 1947, read with Unfair Labour Practices as per Item 5(a), (b) and Item (10) of the V Schedule of the Industrial Disputes Act, 1947 has been filed by the Applicant, inter-alia, seeking the Reliefs as mentioned in Paragraph 27 of the said Application.

2. It is, inter-alia, stated in the said Application that the Applicant is working as a Peon on daily rated basis in the Office of Assistant Director of Income Tax (INV), Aurangabad; and that the Applicant was initially receiving daily wages @ Rs.80/- per day; and that the daily wages were revised from time to time; and that the Applicant continuously worked since 14.8.2000 till December, 2007; and that the Respondents started showing technical breaks in the services of the Applicant only on record with a view to denying the benefits of permanency; and that as a matter of fact, the Applicant worked even during the period of break in service and received wages during such period, however, in somebody else's name; and that the Applicant put in more than 240 days of service in each year ever since 2000; and that the Applicant should have been absorbed against permanent sanctioned post of Peon/Watchman/Sweeper/Record Keeper as the case may be; and that the Respondents indulged into Unfair Labour Practices in its Establishment in relation to the matters enumerated in Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947; and that the Respondents are handing over the Applicant and all other workmen working as casuals or temporaries to a private Contractor; and that since the Applicant is a direct employee of the principal employer, he has been receiving salary from the principal employer since beginning and, therefore, his services cannot be entrusted to a private Contractor; and that the Respondents terminated the services of the Applicant with effect from 3.11.2011.

3. On the basis of the averments made in the said Application, the Applicant has sought various Reliefs as mentioned in paragraph 27 of the said Application including the relief for directing the Respondents to reinstate the Applicant with full back wages, and to make the Applicant permanent as Peon/Watchman/Sweeper/Record Keeper and confer all the benefits of permanency.

4. By the Order dated 4.4.2012, this Tribunal directed for issuance of Notice to the Opposite Parties/Respondents to file Written Statement fixing 25.5.2012.

5. As noted in the Order dated 25.5.2012, Notices issued to the Opposite Parties/Respondents Nos.1 to 4 were duly served.

Mrs.P.S.Shetty, Advocate put in appearance on behalf of the Opposite Parties/Respondents Nos. 1 to 4.

6. On 21.8.2012, as noted in the Order passed on the said date, Written Statement was filed on behalf of the Opposite Parties /Respondents Nos.1 to 4.

7. In the **Written Statement dated 1.8.2012**, filed on behalf of the Opposite Parties /Respondents Nos. 1 to 4 on 21.8.2012, certain Preliminary Objections have been raised in paragraph 1 of the Written Statement. It is, inter-alia, stated in paragraph 1 of the Written Statement that the Preliminary Objections go to the root of the matter affecting the very maintainability of the aforesaid Application and the jurisdiction of this Tribunal to entertain, hear and decide this matter. It is, inter-alia further stated in paragraph 1 of the Written Statement filed on behalf of the Opposite Parties/Respondents No. 1 to 4 (hereinafter also referred to as “the Answering Opposite Parties/ Respondents”) that the Answering Opposite Parties/Respondents do not come within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 and hence the provisions of the said Act are not applicable to the facts in issue; and that the Answering Opposite Parties/Respondents in the instant matter is the Income-Tax Department and its Officers working under the Ministry of Finance, Government of India who are performing sovereign functions of the Government of India in collecting the revenue in the form of direct taxes and other incidental work related there-to. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Answering Opposite Parties/Respondents are not “employer” within the meaning of the definition of “employer” under the provisions of Section 2(g) of the Industrial Disputes Act, 1947 and hence there is no Employer-Employee relationship between the Applicant and the Answering Opposite Parties/Respondents.

8. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/ Respondents that the Application filed by the Applicant under Section 2-A of the Industrial Disputes Act, 1947 is not maintainable as the Applicant is not “workman” in terms of Section 2(s) of the Industrial Disputes Act, 1947. It is, inter-alia, further stated in paragraph 1 of the Written Statement filed on behalf of the Answering Opposite Parties/Respondents that the Tribunal has no jurisdiction to entertain, hear and decide the Application filed by the Applicant as the Answering Opposite Parties/ Respondents perform Sovereign Functions of the State; and that the activities performed by the Answering Opposite Parties/ Respondents do not come within the definition of “industry” in terms of Section 2(j) of the Industrial Disputes Act, 1947; and that the Application of the Applicant is not maintainable, and the prayers sought by the Applicant cannot be invoked under Section 2-A(2) of the Industrial Disputes Act, 1947.

9. Besides raising Preliminary Objections in paragraph 1 of the Written Statement, the Answering Opposite Parties/Respondents have, inter-alia, further stated in subsequent paragraphs of the Written Statement that the Applicant was working as a casual labour and he was paid on the basis of the bills submitted by him from time to time; and that the said payments were made by the Answering Opposite Parties/Respondents in terms of the guide-lines issued by the Central Government; and that the Applicant was casual labour and was paid only for the days when he actually performed duties for the department; and that the Applicant was performing duties of a casual nature and the decision of the Supreme Court in respect of State of Karnataka vs. Umadevi and others decided on 10.4.2006 is not applicable to a casual worker like the Applicant; and that the Applicant was never appointed to a permanent sanctioned post and appointment to such permanent posts is only on the basis of recruitment in terms of the policy guidelines issued in this regard by the Central Government from time to time. It is, inter-alia, further stated in the Written Statement that the Department of the Answering Opposite Parties /Respondents has its own Rules and Regulations and cannot recruit or declare the vacant posts unless required and without due procedure of law. It is, inter-alia, further stated in the Written Statement that the Applicant being a casual labour cannot make claim to any vacant post in the Department. It is, inter-alia, further stated in the Written Statement that the Applicant is not entitled to any of the Reliefs prayed for in Paragraph 27 of the aforesaid Application.

ISSUES:

10. On the basis of the Pleadings exchanged between the parties and with the consent of the learned counsel for the parties, following Issues were framed on 22.11.2012:

- (1) *Whether this Tribunal does not have jurisdiction to entertain and decide this application?*

- (2) *Whether the Opposite Party has committed unfair labour practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?*
- (3) *Whether the applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?*
- (4) *Relief?*

11. The Order dated 22.11.2012, passed on the Order-sheet, is reproduced below:

“Mr.V.G.Indrale, Adv. present on behalf of the applicant.

Mrs.P.S.Shetty, Adv. present on behalf of the opposite party No. 1 to 4 .

Learned counsel for the opposite party has filed reply of the applicant regarding production of documents.

With the consent of learned counsels of the parties Issues framed.

It is agreed that Issue No. 1 is preliminary in nature and it is purely legal and therefore, it has to be decided first.

Put up for arguments on Issue No.1 on 6.12.2012.”

12.*In view of the above-quoted Order, Issue No. 1 is to be decided as Preliminary Issue first.*

Accordingly, this Tribunal is proceeding to consider Issue no.1 namely;

Whether this Tribunal does not have jurisdiction to entertain and decide this application?

13. I have heard the learned counsel for the parties and perused the record.

FINDINGS:

ISSUE NO. 1: As noted above, Issue No.1 is as to whether this Tribunal does not have jurisdiction to entertain and decide the aforesaid Application filed on behalf of the Applicant.

14.In order to appreciate the above Issue, it is necessary to refer to certain *provisions of the Industrial Disputes Act 1947.*

15.*Preamble* to the Industrial Disputes Act, 1947, inter-alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

16. *Sub-section (1) of Section 10* of the Industrial Disputes Act 1947, inter-alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

17.*Section 2A* of the Industrial Disputes Act, 1947, which is relevant in the present case, is reproduced below:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1)*Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

(2)*Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

(3) *The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."*

18. A perusal of sub-section (1) of Section 2A of the Industrial Disputes Act, 1947 shows that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an Industrial Dispute notwithstanding that no other workman nor any Union of Workmen is a party to the dispute.

19. Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 lays down that notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute. Sub-section (2) of Section 2A of the Industrial Disputes Act 1947 further provides that on receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the Appropriate Government in accordance with the provisions of the Industrial Disputes Act, 1947 and all the provisions of the said Act shall apply in relation to such adjudication as they apply in relation to an Industrial Dispute referred to it by the Appropriate Government.

20. From a combined reading of Section 10 and Section 2A of the Industrial Disputes Act, 1947, it is evident that both the said Sections contemplate adjudication of an "Industrial Dispute". It is, therefore, relevant to refer to the definition of "**Industrial Dispute**" as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

21. The word "**employer**" occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

"2 (g) "**employer**" means-

- (i) *in relation to any industry carried on by or under the authority of any department of [the Central government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*
- (ii) *in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"*

22. The word "**Workman**" occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act as under:

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) *who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) *who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) *who is employed mainly in a managerial or administrative capacity; or*
- (iv) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

23. From a combined reading of **Section 2(k)**, **Section 2(g)** and **Section 2(s)** of the Industrial Disputes Act, 1947, it is evident that the word "employer" and the word "workman" are to be understood in the context of "industry". In other words, "industrial dispute" is basically dispute between an "employer" in relation to an industry and the "workman" working in such industry.

24. The word 'industry' is defined in **Section 2(j)** of the Industrial Disputes Act, 1947 as under:

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;”

25. Hence, it is evident that the dispute in order to be the subject-matter of Section 10 or Section 2-A of the Industrial Disputes Act, 1947 as an “industrial dispute” must be a dispute in regard to an “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

26. Coming now to the submissions made by the learned counsel for the parties, Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties /Respondents submits that the Income Tax Department represented by the Answering Opposite Parties/Respondents does not fall within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that the Income Tax Department and its Officers working under the Ministry of Finance, Government of India are performing sovereign functions of the Government of India in collecting the Revenue in the form of Direct Taxes and other incidental work related thereto and, therefore, the Income Tax Department is not covered within the ambit and scope of the definition of “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that any alleged dispute between the employer and the workman would be “industrial dispute” only when it pertains to “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947, and as the Income Tax Department does not fall within the ambit and scope of the word “industry” under the provisions of 2(j) of the Industrial Disputes Act, 1947, the dispute raised by the Applicant in the aforesaid Application is not covered within the ambit and scope of “industrial dispute” as defined in Section 2(k) of the Industrial Disputes Act, 1947. Neither Reference under Section 10 of the Industrial Disputes Act, 1947 could be made by the Appropriate Government in respect of the said dispute nor could the aforesaid Application under Section 2A(2) of the Industrial Disputes Act, 1947 be filed by the Applicant in regard to such dispute. The aforesaid Application, the submission proceeds, is therefore, not maintainable, and the same is liable to be dismissed as such.

27. Mr. Vinod Joshi, learned counsel for the Answering Opposite Parties/Respondents has placed reliance on a decision of a Full Bench of the Gujarat High Court in *Gujarat Forest Producers, Gatherers and Forest Workers, UNI vs State of Gujarat, 2004-III LLJ 259(Guj)*.

28. *In reply*, Mr. V.G. Indrale, learned counsel for the Applicant submits that the Income Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It is submitted that functions discharged by the Income Tax Department cannot be categorized as sovereign functions and, therefore, the Income Tax Department cannot be excluded from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

29. Mr. V.G. Indrale, learned counsel for the Applicant has placed reliance on the following decisions:

- (i) *Bangalore Water Supply and Sewerage Board vs. A.Rajappa, AIR 1978 Supreme Court 548.*
- (ii) *Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182.*
- (iii) *State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001(9) SCC 713.*
- (iv) *Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116.*
- (v) *Life Insurance Corporation of India vs. R.Suresh, 2008(11) SCC 319: AIR 2008 (supp) 1887.*
- (vi) *Asha Ram vs. Divisional Engineer, Telecom Department, 2001(9) SCC 382.*
- (vii) *All India Radio vs. Santosh Kumar and Another, 1998 I CLR 684(SC).*

30. In order to appreciate the submissions made by the learned counsel for the parties, it is pertinent to refer to various decisions including those relied upon by the learned counsel for the parties.

31. In the *State of Bombay & Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 Supreme Court 610*, their Lordships of the Supreme Court considered the question as to whether J.J. Group of Hospitals run by the State of Bombay (Appellant) constituted an “industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships held in the affirmative and concluded that the conduct and running of the group of Hospitals by the State of Bombay amounted to an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 and the relevant provisions of the said Act were applicable. Their Lordships of the Supreme Court held as under:

“16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business

in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S. 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word “undertaking” in S.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of S.2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference.”

“17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must be casual nor must it be for oneself nor for the pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S.2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.”

*“14. It would be possible to exclude some activities from S.2(j) without any difficulty. Negatively stated the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of S.2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is however made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, Governments, both at the level of the States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of S.2(j) should be extended to cover other activities undertaken by the Governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within S.2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as “the primary and inalienable functions of a constitutional Government” [Vide: *Coomber v. Justices of Berks*, (1883) 9 AC 61]; and it is only these activities that are outside the scope of S.2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.”*

32. This decision thus lays down that it is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j), who conducts the activity and whether it is conducted for profit or not do not make a material difference. It has also been laid down that if an activity of a like nature would be an Undertaking under Section 2(j) of the Industrial Disputes Act, 1947 if it is carried on by a private citizen or a group of private citizens, then such an activity, if it is carried on by the Government, would also fall within the purview of the word “Undertaking” in Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that some activities are excluded from the purview of Section 2(j) of the Industrial Disputes Act, 1947. The activities of the Government which can be properly described as Regal or Sovereign activities are outside the scope of Section 2(j) of the Industrial Disputes Act, 1947. These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake.

33. In *The City of Nagpur Corporation vs Its Employees*, AIR 1960 SC 675, their Lordships of the Supreme Court considered the question as to whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of “industry” in Section 2(14) of the C.P. & Berar Industrial Disputes Settlement Act, 1947. Their Lordships noted that the Corporation of the City of Nagpur was constituted under the City of Nagpur Corporation Act, 1948 (Madhya Pradesh Act No. 2 of 1950). Disputes arose between the Corporation and the employees in various departments of the Corporation in respect of Wage Scales, Gratuity, Provident Fund, House Rent, Confirmation, Allowances etc. Their Lordships of the Supreme Court laid down as under:-

“11. A corporation may, therefore, discharge a dual function” it may be statutorily entrusted with regal functions strictly so-called, such as making of laws, disposal of certain cases judicially etc., and also with other welfare activities. The former, being delegated regal functions, must be excluded from the ambit of the definition of “industry”

“15.Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual, would be industry, then they would equally be industry in the hands of a municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity. In other words, whether these three functions are carried out by one department or divided between three departments, the entire organizational activity would be an industry.....”

“17. The result of the discussion may be summarized thus : (1) The definition of “industry” in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act”.

34. Keeping in view the above principles, their Lordships examined the question as to which of the departments of the Corporation would fall within the ambit of the word “industry” as defined in the aforesaid Act (paragraph 20 of the said AIR). Thus for example examining the question in regard to *Fire Brigade Department, Item No. (iii)*, their Lordships observed as under:

“Ex N. A. 22 gives the duties of the driver-cum-fitter of the Fire Brigade Department. This exhibit indicates that the function of this department is to attend to fire calls. Witness No.3 for Party No. 1 says that it is the duty of the fire brigade to supply water at marriage functions and other public functions. The fire brigade employees are not paid any extra amount for supplying water at public or private functions. Though the department renders some extra services, the main function of the department is to attend to “fire calls”. Private bodies also can undertake this service.....These services also satisfy all the tests laid down by us and therefore we hold that this department is also an industry”

35. Similarly, examining the question with regard to *Health Department, Item No. (ix)*, their Lordships of the Supreme Court observed as under:

“This Department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of “industry” in the Act.”.

36. Again examining the question in regard to *Public Gardens Department, Item No. (xi)*, their Lordships of the Supreme Court observed as under:

“The functions of this department are the maintenance of public parks and gardens and laying of new gardens and parks; and planting of trees on road sides. (See the evidence of Witness No. 5 for Party No.1). This service is covered by the definition of “industry”. Any private individual can certainly perform the functions stated above and the fact that the municipality has undertaken those duties does not affect the nature of the service. This also satisfies the tests laid down by us. We, therefore, hold that this Department is an industry”.

37. Similarly, examining the question with regard to *Public Works Department, Item No. (xii)*, their Lordships of the Supreme Court opined as under:

“This department is in charge of construction and maintenance of public works such as roads, drains, building, markets, public latrines etc. For the convenience of the public, this department is divided into zones and every zone has its office. The outdoor staff in the P.W.D. consists of assistant engineer, overseers, sub-overseers, time-keepers, mates, carpenters, masons, blacksmiths and coolies. The other staff, consisting of clerks and peons, performs indoor duties. (See the evidence of Witness No. 5 for Party No.1). This department performs both administrative and executive functions. The services rendered are

such that they can equally be done by private individuals and they come under the definition of “industry”, satisfying both the positive and negative tests laid down by us in this regard. We, therefore, hold that this department is an industry”.

38. Again, examining the question with regard to *Education Department, Item No. (XV)*, their Lordships of the Supreme Court held as follows:

“This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of Witness No. 1 for Party No.1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of “employees” under the Act would certainly be entitled to the benefits of the Act.”

39. The above decision thus lays down that the Regal Functions described as primary and inalienable functions of State though statutorily delegated to a Corporation are necessarily excluded from the purview of the definition of “industry”. It further follows from the decision that in case the functions performed by a Department of the Corporation are such which can equally be performed by any private individual then such functions would not fall within the ambit of Regal Functions so as to be excluded from the purview of the definition of the word “industry”. It is further laid down that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a Corporation. It has also been laid down that if a Department of a Municipality discharges many functions, some pertaining to industry as defined in the aforesaid Act, and other non-industrial activities, the pre-dominant functions of the Department shall be the criterion for the purposes of the said Act in order to determine whether such Department falls within the purview of industry or not.

40. In *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548, relied upon by Mr. V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered various decisions including the decisions in the State of Bombay and Others vs. The Hospital Mazdoor Sabha and Others, AIR 1960 SC 610 (supra) and The City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra), and laid down the following principles for determining the identity of “industry” under the Industrial Disputes Act, 1947:

“161. ‘Industry’, as defined in S. 2 (j) and explained in Banerji (AIR 1953 SC 58) has a wide import.

(a) *Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry’ in that enterprise.*

(b) *Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.*

(c) *The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.*

(d) *If the Organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking*

II. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.*

(a) *‘Undertaking’ must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be ‘industry’ provided the nature of the activity, viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold ‘industry’ undertakings, callings and services, adventures ‘analogous to the carrying on of trade or business.’ All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer-employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.*

III. *Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.*

(a) *The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).*

(b) *A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion,*

substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

- (c) *If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt – not other generosity, compassion, developmental passion or project.*

IV. The dominant nature test:

- (a) *Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.*
- (b) *Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.*
- (c) *Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j).*
- (d) *Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.*

V. *We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873), Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."*

41. Thus this decision lays down that where (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an 'industry' in that enterprise. It has further been laid down that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. It has also been laid down that sovereign functions, strictly understood, qualify for exemption from the purview of "industry" but not the welfare activities or economic adventures undertaken by Government or statutory bodies. It has further been laid down that even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947. It has also been laid down that where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, then the pre-dominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur case (AIR 1960 SC 675) (supra) will be the true test.

42. In **Des Raj vs. State of Punjab and Others, AIR 1988 SC 1182**, relied upon by Mr. V.G. Indrale, learned counsel for the Applicant, the question before their Lordships of the Supreme Court was as to whether the Irrigation Department of the State Government of Punjab was an "industry" under Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court referred to various decisions including the decision in Bangalore Water Supply and Sewerage Board v. A. Rajappa, AIR 1978 SC 548, and examined the question as to whether the functions of the Irrigation Department were essentially Government functions so as to exclude it from the purview of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. Applying the Dominant Nature Test as laid down in Bangalore Water Supply and Sewerage Board v. A. Rajappa, AIR 1978 SC 548, their Lordships concluded that the Irrigation Department was covered within the definition of "industry" under the Industrial Disputes Act, 1947. Their Lordships held as under:

"The Administrative Report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The legal position has been indicated in the earlier part of our judgment. On the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the Irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer J. The main functions of the Irrigation Department when subjected to the Dominant Nature test clearly come within the ambit of industry".

43. It will thus be noticed that the decision in Desi Raj case (supra) accepted the proposition that the sovereign functions undertaken by Government or Statutory bodies are excluded from the purview of the definition of 'industry'. Hence, the Departments discharging sovereign functions are not covered within the purview of "industry" under

Section 2(j) of the Industrial Disputes Act, 1947. However, having regard to the functions of the Irrigation Department, their Lordships of the Supreme Court relied upon the Dominant Nature Test as laid down in *Bangalore Water Supply and Sewerage Board v. A.Rajappa*, AIR 1978 SC 548 (supra), and concluded that applying the said test, the main functions of Irrigation Department come within the ambit of “industry” and, therefore, the Irrigation Department was covered within the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

44. In **State of Gujarat vs. Pratamsingh Narsinh Parmar, 2001 (9) SCC 713** relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question whether the Forest Department in the State of Gujarat could be held to be an “industry” within the meaning of the said expression under the Industrial Disputes Act, 1947 so that the Order of termination without complying with the provisions of Section 25-F of the said Act would get vitiated. Learned Single Judge followed the decision of the Supreme Court in *Bangalore Water Supply & Sewerage Board vs. A. Rajappa*, AIR 1978 SC 548 and held that the impugned Order of termination was vitiated for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. The Division Bench of the High Court relying upon the decision of the Supreme Court in the case of *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others*, JT 1995 (9) SC 467, concluded that the work undertaken by the Forest Department could not be regarded as part and parcel of the Sovereign functions of the State and, therefore, the Order of termination of the concerned employee was liable to be set aside for non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court allowed the Appeal filed by the State of Gujarat and set-aside the Judgements of the High Court. Their Lordships of the Supreme Court held as under:

*“ 5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes “an industry”. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25-F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25-F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in *Jagannath Maruti Kondhare* (supra) to hold that the Forest Department could be held to be “an industry”.*

*“6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court’s judgment in the *Jagannath Maruti Kondhare*’s case (supra), inasmuch as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is “an industry”. In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.”*

This decision thus lays down that ordinarily, a Department of the Government cannot be held to be an “industry” and rather it is a part of the Sovereign function. It would be for the person concerned who claims the same to be an “industry”, to give positive facts for coming to the conclusion that it constitutes an “industry”. Their Lordships have emphasized that in the absence of requisite pleadings the decision in *Chief Conservator of Forests and Another vs. Jagannath Maruti Kondhare and Others*, (supra) cannot have any application to the facts of the case under consideration before their Lordships. It will thus be noticed that this decision has reiterated the proposition that the Department of the Government exercising sovereign functions cannot be treated to be an “industry”

45. In **Agricultural Produce Market Committee vs. Ashok Harikuni, 2000(8) SCC 61: AIR 2000 SC 3116**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether an Agricultural Produce Market Committee (Appellant before the Supreme Court), established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 was an “industry” as contemplated under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court concluded that the Agricultural Produce Market Committee including its functionaries could not be said to be performing functions which were sovereign in character, and most of its functions could be undertaken even by private persons, and therefore, the Agricultural Produce Market Committee would fall within the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships held as under:

“32. SO, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ‘sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also make such enterprise to be outside the ambit of “industry” as also in State of Bombay and others case (supra).

“35 In view of the aforesaid settled legal principle the width of “industry” being of widest amplitude and testing it in the present case, in view of the preamble, Objects and Reasons and the scheme of the Act, the pre-dominant object clearly being regulation and control of trading of agricultural produce, thus appellant-committee including its functionaries cannot be said to be performing functions which are sovereign in character. Most of its functions could be undertaken even by private persons. Thus the appellant would fall within the definition of “industry” under Section 2(j) of the Central Act. In view of this, we uphold that respondent employees are ‘workman’ under the Central Act as held by the Labour Court and confirmed by the High Court. The Labour Court has dealt with each individual case and came to the conclusion in favour of respondent-employees which has also been confirmed by learned Single Judge and Division Bench of the High Court, which does not call for any interference. Accordingly, the present appeals have no merits and are dismissed. Costs on the parties.”

46. This decision has thus reiterated that the State or its Department performing sovereign functions would not fall within the ambit of the word “industry” under Section 2(j) of the Industrial Disputes Act, 1947. It has also been emphasized that dichotomy between sovereign and non-sovereign functions could be found by finding which of the functions of the State could be undertaken by any private person or Body. The one which could be undertaken by any private person or Body cannot be sovereign functions.

47. Giving examples of sovereign functions, the above decision, inter-alia, mentions “taxation, eminent domain and police power”.

48. In **Life Insurance Corporation of India vs. R.Suresh, 2008 (11) SCC 319**, relied upon by Mr.V.G.Indrale, learned counsel for the Applicant, their Lordships of the Supreme Court considered the question as to whether jurisdiction of the Industrial Courts was ousted in regard to an Order of dismissal passed by the Life Insurance Corporation of India, a Corporation constituted and incorporated under the Life Insurance Corporation Act, 1956. Their Lordships of the Supreme Court held that even though Life Insurance Corporation was a “State” within the meaning of Article 12 of the Constitution of India, the same by itself, would not take Life Insurance Corporation outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court examined the provisions of the Life Insurance Corporation Act, 1956 and concluded that the jurisdiction of the Industrial Court was not ousted by the provisions of the said Act.

49. Thus this decision mainly examined the question as to whether the jurisdiction of the Industrial Courts was ousted in regard to the Order of dismissal passed by the Life Insurance Corporation of India. The said decision, in my view, is not applicable for deciding the issue involved in the present case.

50. In **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court dealt with the question as to whether Telecom Department was an “industry”. Relying upon an earlier decision in **General Manager, Telecom vs. S. Srinivas Rao and Others, 1997 (8) SCC 767**, their Lordships of the Supreme Court held that the Telecom Department was an “industry”.

51. In **All India Radio vs. Santosh Kumar and another, 1998 I CLR 684** (SC), their Lordships of the Supreme Court considered the question as to whether All India Radio and Doordarshan Kendra (Appellants before the Supreme Court) were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held that All India Radio as well as Doordarshan Kendra were covered within the definition of the word “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court held as under:

“The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of **Bangalore Water Supply and Sewerage Board etc v. A Rajappa and Others etc.** reported in (1978) 2 SCC 213, save and except the

sovereign function, all other activities of employers would be covered within the sweep of term 'industry' as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to S.L.P. (C) Nos. 7722-7722A OF 1993), being the extracts from Doordarshan Manual Vol.I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and day out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio..... Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date."

52. This decision has thus reiterated the proposition that in case a Department discharges Sovereign functions of the State, then such Department would not fall within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by All India Radio and Doordarshan Kendra could not be said to be of sovereign nature and, therefore, they were not excluded from the purview of the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

53. In **General Manager Telecom vs. S. Srinivasa Rao and others 1997 1 LLJ 255 (SC): 1997 (8) SCC 767**, which as noted above, has been relied upon by their Lordships of the Supreme Court in **Asha Ram vs. Divisional Engineer, Telecom Department, 2001 (9) SCC 382**, their Lordships of the Supreme Court considered the question whether the Telecom Department of the Union of India was an "industry" within the meaning of the definition of "industry" in Section 2(j) of the Industrial Disputes Act, 1947. Relying upon the Dominant Nature test as laid down in the Supreme Court decision in **Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548**, their Lordships concluded that the Telecom Department of the Union of India was an "industry" within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947 because the Department was engaged in a Commercial activity and was not engaged in discharging any of the sovereign functions of the State.

54. Thus, in this decision, their Lordships of the Supreme Court have reiterated the proposition that in case a Department of the Government discharges sovereign functions of the State then such Department would not fall within the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, the functions carried on by the Telecommunication Department could not be said to be of sovereign nature and, therefore, the said Department was not excluded from the purview of the definition of the word "industry" as contained in Section 2(j) of the Industrial Disputes Act, 1947.

55. In **Gujarat Forest Producers, Gatherers and Forest Workers UNI vs. State of Gujarat, 2004 - III LLJ 259 (Gujarat)**, relied upon by Mr.Vinod Joshi, learned counsel for the contesting Opposite Parties/Respondents, a Full Bench of the Gujarat High Court considered various questions including the question as to "Whether the Forest Department and the Irrigation Department of the State can be said to be an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?". Their Lordships of the Gujarat High Court held as under:

"Q.1 Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?

Q.2 Whether Forest Department of the State is an industry or not?

Ans. (i) *The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board's case (supra), including the law falling under Articles 309 to 311 of the Constitution.*

Ans. (ii) *The activity of Irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an "industry" under Section 2(j) of the Industrial Disputes Act, 1947".*

56. In the above decision, their Lordships of the Gujarat High Court have also laid down as under:

“26. In Bangalore Water Supply & Sewerage Board’s case (supra), the Supreme Court in the judgment, indicated the following triple test for finding out whether an enterprise was prima facie an “industry” within the meaning of Section 2 (j):

- (i) The activity of the enterprises is systematic;*
- (ii) The activity is organized by co-operation between the employees and the employer; and*
- (iii) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants.”*

“49. When the activity of the Government is an industry by virtue of its satisfying the triple ingredients test and is undertaken for the purpose of production and/or distribution of goods and services to satisfy the wants and desires of the consumers including the community wants, it is obvious that the State acts in the economic field. The constitutional functions of the Government which are inalienable and primary in nature, would be an exception in the sense that even if the triple ingredients test is satisfied, the Government activity which amounts to a sovereign function i.e., primary inalienable function, will qualify for exemption as declared in the judgement in Bangalore Water Supply & Sewerage Board’s case (supra). Even welfare activities or economic adventures undertaken by the State through its ruling organs are not exempted and would be within the purview of the definition of “industry” if, and only if, such activity satisfies the triple ingredients test.”

57. Thus, this decision of the Full Bench of the Gujarat High Court lays down that even if the triple ingredients test as laid down in the case of Bangalore Water Supply and Sewerage Board v. A.Rajappa, AIR 1978 SC 548, is satisfied in respect of the activity of the Government, the Government activity which amounts to a sovereign function, that is, primary inalienable function, will qualify for exemption from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. It has been emphasized that the Constitutional functions of the Government which are inalienable and primary in nature, would be an exception and would not fall within the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

58. ***From the propositions laid down in the above decisions, the following principles, amongst others, may be deduced:***

- (i) It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Industrial Disputes Act, 1947. The true focus is functional and the decisive test is the nature of the activity.
- (ii) In order to find out as to whether an enterprise is prima facie an “industry” within the meaning of Section 2 (j) of the Industrial Disputes Act, the following three tests should be satisfied:
 - (a) The activity of the enterprise is systematic;
 - (b) The activity is organized by co-operation between the employees and the employer;
 - (c) The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.
- (iii) Sovereign functions undertaken by Government or Statutory Bodies or Departments or Entities or Instrumentalities are exempt from the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947. Hence, the Government or Statutory Bodies or Departments or Entities or Instrumentalities performing the sovereign functions would not fall within the purview of the word “industry” as defined in the Industrial Disputes Act, 1947.
- (iv) Sovereign functions are regal functions described as primary and inalienable functions of the State, and these are excluded from the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947. However, in case the functions performed by Government or Statutory Body or Department or Entity or Instrumentality are such which can equally be performed by any private individual then such functions would not fall within the ambit of sovereign functions so as to be excluded from the purview of the definition of the word “industry”.
- (v) If a service rendered by an individual or a private person would be an “industry” it would equally be an “industry” in the hands of the Government or Statutory Body or Department or Entity or Instrumentality.
- (vi) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j) of the Industrial Disputes Act, 1947.

- (vii) Where a complex of activities are performed by a department, some of which qualify for exemption, while others not, then the pre-dominant nature of the services and the integrated nature of the department will be the test in determining whether the department would fall within the category of industry or not.

59. *Keeping in view the above principles, let us proceed to consider the question involved in the present case namely, as to whether the Income Tax Department falls within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.*

60. The answer to this question would evidently depend on the question as to whether the Income Tax Department exercises sovereign functions of the State. In case the Income Tax Department discharges sovereign functions of the State, it would evidently not fall within the purview of the definition of “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

61. In order to consider the above question, it is necessary to refer to **Article 265 of the Constitution of India** which is reproduced below:

“265. Taxes not to be imposed save by authority of law – No tax shall be levied or collected except by authority of law.”

62. Article 265 of the Constitution of India thus provides that no tax shall be levied or collected except by authority of Law. The scope of the words “levy” and “collection” with reference to Article 265 of the Constitution of India was considered by their Lordships of the Madras High Court in **Rayalseema Constructions vs. Deputy Commercial Tax Officer, AIR 1959 Madras 382**. Their Lordships of the Madras High Court quoted the following passage from the decision in **Whitney vs. Commissioner of Inland Revenue 1926 A.C. 37**:

“27. Lord Dunedin in Whitney v. Commissioner of Inland Revenue, 1926 A.C. 37, stated as follows: “Now, there are three stages in the imposition of a tax; there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already” been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.”

63. After quoting the above passage, their Lordships of the Madras High Court observed as under:

“30. We do not by any means feel assured that Article 265 can or ought to be cut up in the manner that the argument of the learned Advocate General requires. The word “levy” is frequently used to include both of the first two stages involved in the process of taxation, viz, the levy properly so-called and the determination of the amount of the tax. It appears to us that the words “levy” and “collection” are used in Article 265 of the Constitution in a comprehensive manner and that they are intended to include and envelop the entire process of taxation commencing from the taxing Statute to the taking away of the money from the pocket of the citizen And, what Article 265 enjoins is that every stage in this entire process must be authorized by the law.”

64. Hence, in view of the above decision, it is evident that Article 265 of the Constitution of India covers all the aspects of taxation namely, declaration of liability, assessment and recovery.

65. **Entry 82 of List I (Union List) of the VII Schedule** to the Constitution of India reads as under:

“82. Taxes on Income other than Agricultural Income.”

66. It will thus be seen that Parliament has been given power in respect of “taxes on Income other than Agricultural Income” in view of Article 82 of List I (Union List) of VII Schedule to the Constitution of India.

67. In exercise of the above power, Parliament has enacted the **Income Tax Act, 1961**. In exercise of the powers conferred by Section 295 of the Income Tax Act, 1961, the Central Board of Revenue has framed the **Income Tax Rules, 1962**.

68. Section 4 of the Income Tax Act, 1961 is the Charging Section and it, inter-alia, provides that the Income Tax shall be charged for any Assessment Year in respect of the total income of the Previous Year of every person. The rate or rates at which such Income Tax is to be charged for any Assessment Year is to be provided by enacting a Central Act which is commonly known as the Finance Act.

69. Section 5 of the Income Tax Act, 1961 deals with the scope of Total Income .

70. Chapter III of the Income Tax Act, 1961 consisting of Sections 10 to 13-B deals with “Incomes which do not form part of Total Income”.

71. Chapter IV of the Income Tax Act, 1961 consisting of Sections 14 to 59 deals with “Computation of Total Income”.
72. Chapter V of the Income Tax Act, 1961 consisting of Sections 60 to 65 deals with “Income of Other Persons, included in Assessee’s Total Income”.
73. Chapter VI-A of the Income Tax Act, 1961 consisting of Sections 80-A to 80-VV deals with “Deductions to be made in computing Total Income”.
74. Chapter XIII of the Income Tax Act, 1961 deals with the “Income Tax Authorities”.
75. Part-A of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 116 to 119 deals with “Appointment and Control” of the Income Tax Authorities.
76. Part-B of Chapter XIII of the Income Tax Act, 1961 consisting of Sections 120 to 130-A deals with “Jurisdiction” of the Income-Tax Authorities.
77. Part C of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 131 to 136 deals with “Powers” of the Income Tax Authorities.
78. Part D of Chapter XIII of the Income-Tax Act, 1961 consisting of Sections 137 and 138 deals with “disclosure of information” respecting assessee.
79. Chapter XIV of the Income-Tax Act, 1961 consisting of Sections 139 to 158 deals with “Procedure for Assessment”.
80. Chapter XVII of the Income Tax Act, 1961 consisting of Sections 190 to 234-E deals with “Collection and Recovery of Tax”.
81. Chapter XXI of the Income-Tax Act, 1961 consisting of Sections 270 to 275 deals with “Penalties Imposable” for various defaults under the Income-Tax Act, 1961.
82. Chapter XXII of the Income-Tax Act, 1961 consisting of Sections 275A to 280D deals with “Offences and Prosecutions”.
83. It will thus be seen that the Income-Tax Act, 1961 takes within its fold the entire process of taxation pertaining to tax on Income, namely, Declaration of Liability, Assessment and Recovery. Various functions pertaining to imposition of tax on Income as contemplated under the Income-Tax Act, 1961 have been entrusted to the Income Tax Department of the Central Government. As noted above, the Income Tax Act, 1961 has been enacted by Parliament for levying and collecting tax on Income other than Agricultural Income in exercise of its powers conferred under Article 265 of the Constitution of India. Power to impose tax on Income other than Agricultural Income is Constitutional Power conferred on Parliament by Article 265 of the Constitution of India. Various functions contemplated under the Income-Tax Act, 1961 regarding Charging of Tax on Total Income of every person, Computation of Total Income, Assessment of Tax on Total Income, Collection and Recovery of Tax, Penalties for defaults under the Income Tax Act etc, are evidently regal and inalienable functions of the State. These functions are discharged by the Income Tax Department of the Central Government. Hence, the functions discharged by the Income Tax Department are sovereign functions. It is noteworthy that the functions contemplated under the Income Tax Act, 1961 cannot be discharged by any private person. The functions discharged by the Income-Tax Department being sovereign functions, the Income-Tax Department will evidently be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.
84. In this regard, reference may be made to a decision of the Supreme Court in ***New Delhi Municipal Committee vs. State of Punjab and Others, AIR 1997 SC 2847***. In this case, their Lordships of the Supreme Court referred to Article 265 of the Constitution of India and opined that Power to Tax is an incident of sovereignty. Relevant Paragraphs of the Judgment are as under:

“91. We have great difficulty in accepting this assertion. Article 265 of the Constitution emphatically mandates that “no tax shall be levied or collected except by authority of law.” Under the framework of the Constitution there are two principal bodies which have been vested with plenary powers to make laws, these being the Union Legislature, which is described by Art.79 as “Parliament for the Union” and the State Legislatures, which are described by Art. 168 in the singular as “Legislature of a State.” While certain other bodies have been vested with legislative power, including the power of levying taxes, by the Constitution for specific purposes, as in the case of District Committees and Regional Councils constituted under the aegis of the Sixth Schedule to the Constitution, the plenary power to legislate, especially in matters relating to revenue, still vests with the Union and the State Legislatures. Even if the submission that Municipalities now possess, under Part IXA of the Constitution, a higher juridical status is correct, the extension of that logic to the proposition that they have plenary powers to levy taxes is not, as is clear from a perusal of the relevant part of Art. 243X of the Constitution which reads as under:

:243 X. Power to impose taxes by, and Funds of, the Municipalities:- The Legislature of a State may, by law,-

- (a) authorize a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
- (b) to (d)

as may be specified in law.”

92. Article 243ZB provides that this provision will be applicable to Union Territories and the reference to the Legislature of a State would apply, in relation to a Union Territory having a Legislative Assembly, to that Legislative Assembly.

93. It is, therefore, clear that even under the new scheme, Municipalities do not have an independent power to levy taxes. Although they can now be granted more substantial powers than even before, they continue to be dependent upon their parent Legislatures for the bestowal of such privileges. In the case of Municipalities within States, they have to be specifically delegated the power to tax by the concerned State Legislature. In Union Territories which do not have Legislative Assemblies of their own, such a power would have to be delegated by Parliament. Of the rest, those which have Legislative Assemblies of their own would have to specifically empower Municipalities within them with the power to levy taxes.

141. A Federation pre-supposes two coalescing units; the Federal Government/Centre and the States/Provinces. Each is supposed to be supreme in the sphere allotted to it/them. Power to tax is an incident of sovereignty. Basic premise is that one sovereign cannot tax the other sovereign. Articles 285 and 289 manifest this mutual regard and immunity but in a manner peculiar to our constitutional scheme. While the immunity created in favour of the Union is absolute, the immunity created in favour of the States is a qualified one. We may elaborate: Article 285 says that “the property of the Union shall.....be exempt from all taxes imposed by a State or by any authority within a State’ unless, of course, Parliament itself permits the same and to the extent permitted by it. (Clause (2) of Article 285 saves the existing taxes until the Parliament otherwise provides, but this is only a transitional provision) The ban, if it can be called one, is absolute and emphatic in terms. There is no way a State legislature can levy a tax upon the property of the Union. So far as Article 289 is concerned, the position is different. Clause (1), had it stood by itself, would have been similar to clause (1) of Article 285. It says that “the property and income of a State shall be exempt from Union taxation”. But it does not stand alone. It is qualified by clause (2) and clause (3) is an exception to clause (2). But before we refer to clause (2), a word with respect to the meaning and ambit of the expression “property” occurring in this article. Expression “property” is wide enough to take in all kinds of property. In *Re the Bill to amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944*, (1964) 3 SCR 787: (AIR 1963 SC 1760), all the learned Judges (both majority and dissenting) were agreed that the expression must be understood in its widest sense. There is no reason to put a restricted construction thereon. Indeed, there is no controversy about this proposition before us. Coming to clause (2), it says that the ban imposed by clause (1) shall not prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as the Parliament may by law provide, in respect of (a) trade or business of any kind carried on by or on behalf of the Government of a State or (b) any operations connected with such trade or business or (c) any property used or occupied for the purposes of such trade or business or (d) any income accruing or arising in connection with such trade or business. (The inspiration for this provision may perhaps be found in certain United States’ decisions on the question of the power of the units of a federal polity to tax each others properties.) Clause (3) empowers the Parliament to declare, by law, which trade or business or any class of trades or businesses is incidental to the ordinary functions of the Government, whereupon the trades/businesses so specified go out of the purview of clause (2).”

(Emphasis supplied)

Hence, power conferred on Parliament to impose Tax on Income is an incident of sovereignty.

85. In view of this, the functions discharged by the Income-Tax Department under the Income-Tax Act 1961 and the Rules framed thereunder are sovereign functions. As such, Income-Tax Department will be outside the purview of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

86. It is also note-worthy that in *Agricultural Produce Market Committee vs. Asok Harikuni*, 2000(8) SCC 61: AIR 2000 SC 3116, as mentioned earlier, their Lordships of the Supreme Court, while giving examples of sovereign functions, mentioned “taxation” as a sovereign function.

87. We may now deal with the submissions made by Shri V.G.Indrale, learned counsel for the Applicant, and the same are being dealt with as under:

(1) It is submitted by Shri V.G.Indrale, learned counsel for the Applicant that the Income-Tax Department is covered within the ambit of the word “industry” as defined in Section 2(j) of the industrial Disputes Act, 1947. He refers to the provisions contained in Section 2(j) of the Industrial Disputes Act, 1947, and has placed reliance on the triple ingredients test laid down by their Lordships of the Supreme Court in *Bangalore Water Supply and*

Sewerage Board case (supra). He submits that the three tests laid down by the Supreme Court in the said case are satisfied in respect of the Income-Tax Department, and as such, the Income-Tax Department falls within the ambit of the word “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

88. I have considered the submissions made by Mr.V.G.Indrale, learned counsel for the Applicant, and I find myself unable to accept the same for the following reasons:

- (A) As noted earlier, the triple ingredients test laid down in Bangalore Water Supply and Sewerage Board case (supra) is as under:
- “(i) *The activity of the enterprise is systematic;*
 - (ii) *The activity is organized by co-operation between the employees and the employer;*
 - (iii) *The organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes.”*

89. However, as noted earlier, in the Full Bench decision of the Gujarat High Court in **Gujarat Forest Producers, Gatherers and Forest Workers UNI case (supra)**, their Lordships of the Gujarat High Court have held that in case a Government activity amounts to a sovereign function then such activity will not be covered within the definition of “industry” even if the triple ingredients test is satisfied in respect of such activity. In view of this decision, it is evident that even if it be assumed that the functions discharged by the Income-Tax Department satisfy the triple ingredients test mentioned above, as contended by Mr.V.G.Indrale, learned counsel for the Applicant, still the functions discharged by the Income-Tax Department being sovereign functions, the same would be outside the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947, and the Income-Tax Department would not be covered within the ambit of “industry” as defined in Section 2(j) of the Industrial Disputes Act, 1947.

90. (B) Third test as contained in the triple ingredients test mentioned above requires that the organized activity is for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. This test is evidently not satisfied in respect of the Income-Tax Department. The Income-Tax Department, as noted earlier, performs sovereign functions as laid down in the Income-Tax Act, 1961 and the Rules framed thereunder, and such functions have no direct nexus with the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The allocation of the Income-Tax is done alongwith other Direct and Indirect Taxes under the Union Budget every year. Hence, even if it be assumed that the first and second tests under the triple ingredients test are satisfied in respect of the Income-Tax Department, still the third test as laid down in the triple ingredients test is not satisfied. In view of this also, the Income-Tax Department is not covered within the purview of the definition of “industry” as contained in Section 2(j) of the Industrial Disputes Act, 1947.

91. (2) Mr.V.G.Indrale, learned counsel for the Applicant refers to various paragraphs of the decision in **Bangalore Water Supply and Sewerage Board case (supra)** wherein their Lordships of the Supreme Court have dealt with in detail the decision of the Supreme Court in the City of Nagpur Corporation vs. Its Employees, AIR 1960 SC 675 (supra). Mr.V.G.Indrale, learned counsel for the Applicant particularly refers to paragraph 88 of the decision in Bangalore Water Supply and Sewerage Board case (supra) as reported in AIR. The said paragraph 88 is reproduced below:

“By these tokens, which find assent from us, the tax department of the local body is ‘industry’. The reason is this (at pp. 685, 686 of AIR):

“The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of “industry”, it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of “industry”, we should hold that the employees of the tax department are also entitled to the benefits under the Act.”

92. From a perusal of the above-quoted paragraph, it is evident that their Lordships of the Supreme Court in Bangalore Water Supply and Sewerage Board case (supra) have concurred with the view that the Tax Department of the local body is an “industry” as laid down in the City of Nagpur Corporation case (supra). In the City of Nagpur Corporation case (supra), their Lordships of the Supreme Court while dealing with the Tax Department of the Corporation observed as under:

“(i)Tax Department : The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes : the same staff does the work connected with assessment and collection of water rates as well as scavenging taxes. It is not disputed that the work of assessment and levy of water rate and scavenging rate for private latrines is far heavier than the other works entrusted to

this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore, must accept the finding of the State Industrial Court that the staff of this department doing clerical or manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely, scavenging and supply of water, can equally be undertaken by a private firm or an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of "industry". We would, however, prefer to sustain the finding on a broader basis. There cannot be a distinction between property tax and other taxes collected by the municipality for the purposes of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry", it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act.

93. It will thus be seen that in view of the activities performed by the Tax Department regarding collecting taxes and fees in order to enable the Municipality to discharge its statutory functions, the Dominant Nature Test was applied, and it was concluded that the Tax Department would also fall within the ambit of "industry". The said decision is not applicable to the present case as the Income-Tax Department is only concerned with the imposition of Tax on Income as contemplated under the Income-Tax Act, 1961 and, therefore, there is no occasion to apply the Dominant Nature Test as was applied in the case of Tax Department of the Corporation in the City of Nagpur Corporation case (supra).

94.(3) As regards various decisions relied upon by Mr.V.G.Indrale, learned counsel for the Applicant wherein various entities were held to be "industry", the said decisions have already been dealt with in earlier part of this Award. As noted earlier, the said decisions have accepted the proposition that in case an entity performs sovereign functions, the same would not fall within the ambit of "industry" as defined Section 2(j) of the Industrial Disputes Act, 1947. However, in the said decisions, the functions performed by various entities were held to be non-sovereign functions and, therefore, the said entities were held to be covered within the ambit of "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947. The said decisions are, therefore, not applicable to the facts and circumstances of the present case. As held above, the functions discharged by the Income-Tax Department are sovereign functions and, therefore, the Income-Tax Department does not fall within the ambit of "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947.

95. Hence, the dispute sought to be raised by the Applicant in the present Application is not an "Industrial Dispute".

96. Evidently, therefore, the present Application filed by the Applicant under Section 2-A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), (b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal.

97. **Issue No.1** is, therefore, answered by stating that this Tribunal does not have jurisdiction to entertain and decide this Application.

HAVING DECIDED ISSUE NO.1, WE NOW PROCEED TO TAKE NOTE OF OTHER ISSUES FRAMED IN THE PRESENT CASE.

98. **ISSUE NO.2 :** Issue No.2, as noted above, is as to "whether the Opposite Party has committed Unfair Labour Practice under Item 5(a), 5(b) and Item 10 of the Schedule V of the Industrial Disputes Act?"

The said Issue thus pertains to the merits of the case of the Applicant as set up in the present Application.

99. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.2 as framed in the present case.

100. Issue No.2 stands disposed of accordingly.

101. **ISSUE NO.3:** Issue No.3, as noted above, is as to "whether the Applicant is entitled to be made permanent as Peon/Watchman/Sweeper/Record Keeper and is entitled to all the benefits including the arrears of pay?"

102. This issue again pertains to the merits of the case as set up by the Applicant in the present Application.

103. In view of the finding recorded in respect of Issue No. 1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set up in the present Application. Therefore, no opinion is expressed by the Tribunal in respect of Issue No.3 as framed in the present case.

104. Issue No.3 stands disposed of accordingly.

105. **ISSUE NO.4:** Issue No.4, as noted above, is regarding relief to which the Applicant is entitled in the present Application.

106. In view of the finding recorded above in respect of Issue No.1 that the present Application is not maintainable before this Tribunal and this Tribunal does not have jurisdiction to entertain and decide the present Application, no relief can be granted by this Tribunal in the present Application.

107. Issue No.4 stands disposed of accordingly.

108. In view of the above discussion, it is concluded that the present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is not maintainable before this Tribunal, and the same is liable to be dismissed as such.

109. The present Application filed by the Applicant under Section 2A(2) of the Industrial Disputes Act, 1947 read with Unfair Labour Practices as per Item 5(a), 5(b) and Item 10 of Schedule V of the Industrial Disputes Act, 1947 is accordingly dismissed as not maintainable.

110. Award is passed accordingly.

JUSTICE S.P. MEHROTRA, Presiding Officer

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1555.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 30/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/72/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. 30/2006) of the Central Government Industrial Tribunal-cum-Labour-Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 21.07.2016.

[No. L-40012/72/2005-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 11th day of July, 2016

INDUSTRIAL DISPUTE No. 30/2006

Between:

Smt. K. Saraswathi,

Q. No. 2 GF, Block No. 34, Side III,

Suryarao Nagar, HAD Colony,

Borabanda, Hyderabad.

...Petitioner

AND

The Chief General Manager,

Bharat Sanchar Nigam Ltd.,

Office of the CGM, Telecom,

A.P. Circle,

Hyderabad – 1.

...Respondent

Appearances:

For the Petitioner : M/s. A. Raghu Kumar & B. Pavan Kumar, Advocates

For the Respondent : Sri M.C. Jacob, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40012/72/2005-IR(DU) dated 11.5.2006 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Ltd., Hyderabad in terminating the services of Smt. K. Saraswathi, Ex-part time sweeper with effect from 1.11.2004 is legal and justified? If not, to what relief the workman is entitled to?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.30/2006 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The Petitioner was initially appointed as part time sweeper cum water women to work 3 hours per day in the office of the then Assistant Engineer (Co-Axial Outdoor), under the Respondent in the Department of Telecommunications, Saifabad from 7.6.1988 to 21.2.1992. Later she worked for 1499 days from 24.2.1992 to 9.6.1997 in the office of Sub Divisional Engineer, Carrier Maintenance Group (DOT), Saifabad, Hyderabad. It is submitted that the Respondent vide his letter No.TA/EST/6-10/97, conveyed his decision for a diversion of part time sweeper post in the office of the DE(A/T) II line maintenance, Hyderabad to the office of the Divisional Engineer (A/T) (Switching) and the Divisional Engineer (Transmission Maintenance) CTO Compound, Secunderabad. Accordingly, the Petitioner was transferred to the said office by the Respondent. It is stated that the Petitioner worked in the said post diligently. It is further stated that the Government of India, department of Telecommunications vide its order No.269-13/99-STN-II dated 16.9.1999 passed order for conversion of all the part time casual labourers working for 4 or more than 4 hours per day into full time casual labourers. Subsequently, Government of India, DOT vide its Order No. 269-13/99-STN-II dated 25.8.2000 passed order for conversion of part time casual labour working for less than 4 hours per day into full time casual labour and later the same orders were reiterated vide DOT letter No.269-10/97-STN-II dated 29.9.2000. According to the above orders the Petitioner is eligible for conversion into full time casual labourer and for subsequent regularization. It is also stated that in the mean while the Government of India decided to form a company by name Bharat Sanchar Nigam Ltd., (BSNL) w.e.f. 1.10.2000 and transferred all the staff on as it is and where it is basis. It is stated that as the Petitioner was eligible for a grant of full time status, the case of the Petitioner was considered by the Deputy General Manager Transmission Maintenance (BSNL) vide his letter No.DGMTM/F-2/2001-2002 dated 28.1.2002 and the same forwarded to the Principal General Manager (BSNL), Hyderabad, along with all the required particulars and certification and as such, the case of the Petitioner was considered for conversion from part time to full time casual labour. It is further stated that while the matter stood thus, to the utter surprise of the Petitioner and ignoring the facts of the case of the Petitioner and earlier orders of the Chief General Manager and other officers, the Chief General Manager vide his letter No.TA/STA/20-50/HTD/2004/6 dated 25.9.2004 issued a note contending that there was no approval for engagement of the Petitioner as part time casual labourer and directed the Deputy General Manager (Operations)Circle Office to ask the Petitioner to report to the Principal General Manager, who is the recruiting authority with further directions to the Principal General Manager (BSNL) to retrench the Petitioner, if there is no work as per the provisions of the Industrial Disputes Act. In October, 2004, it is learnt by the Petitioner from the Divisional Engineer Acceptance and Testing (Switching and Transmission) and QOS that it was proposed to wind up the unit vide BSNL, DE (AT)(Switching and Transmission) and QOS letter No.E-9/II LM HD/97-98 dated 5.10.2004. It is further submitted that the Divisional Engineer Acceptance Testing vide his letter No.E-9/II LMHD/97-

98 dated 6.10.2004 ordered retrenchment of the Petitioner without giving notice as per the provisions of Sec.25-F of the Industrial Disputes Act or under Section 25-FFF of the Industrial Disputes Act. Under the above circumstances the Petitioner represented his grievance to the Respondent. But no favourable order was given from the side of the Respondent. Later the Petitioner approached the Assistant Labour Commissioner(Central), Hyderabad for settlement of her grievance on 24.2.2005. After prolonged deliberations, as there was no settlement between the Petitioner and the Respondents, the Central Labour Commissioner, Hyderabad recorded the failure of conciliation proceedings and referred the matter to the Ministry of Labour and Employment in turn referred the matter to the Central Government Industrial Tribunal cum Labour Court for adjudication. Hence, this reference.

3. Respondent filed counter with the averments in brief as follows:

The Respondent in his written statement while denying some of the facts averred in the claim statement have stated that the Assistant Engineer, Co-axial project office of the STSR, Hyderabad has engaged the Petitioner as a part time sweeper for three hours per day w.e.f. 7.6.1988. Subsequently her service was continued in another project of the Carrier Maintenance Group in the same office from 1992 onwards. By proceedings dated 2.6.1997 her service was entrusted with the Divisional Engineer, A/T in the office of the DGM, transmission and maintenance at Secunderabad which is another project. It is stated that the Government of India, Department of Telecom services by proceedings dated 25.8.2000 decided as a one time relaxation to convert part time casual labourers to the extent of the numbers indicated against respective field units provided there is shortage of group D staff and if there is no shortage at the station where the part time casual worker is working there will not be any conversion. As there was no vacancy of Group D in the Office of the Principal General Manager (BSNL), the Petitioner could not be converted to full time casual labour. As the office in which the Petitioner is working i.e., DE (Transmission and maintenance) CTO, Secunderabad unit to be closed as the project work was completed, she was informed by proceedings dated 6.10.2004 that her services were not required from 1.11.2004. Once again by proceedings dated 10.1.2005 the office of the Principal General Manager (BSNL), informed the office of the Chief General Manager that the services of the Petitioner has been dispensed with w.e.f. 1.11.2004 due to closure of DE (Transmission and Maintenance) CTO, Secunderabad unit, since there is no shortage of mazdoor in Hyderabad Telecom Districts, and no work for part time sweepers. It is further stated that as the Petitioner was working in a project and the same was closed, due to closure of work, the services of the Petitioner was to be terminated. As there was no vacancy of Group D to extend the scheme conversion of the Petitioner into full time casual labour could not be done. The contention of the Petitioner in that she was fully eligible for conversion is incorrect as conversion can not be effected. Since the Petitioner is working in a project and the same is closed as the project work is over, the provisions of Sec.25F has got no application to this case. The Petitioner can not compare her case on par with other regular employees working in the department and as such her casual service as part time sweeper was terminated on closure of the project office of Transmission and Maintenance at Secunderabad. Therefore, the submission with regard to application of Sec.25F in her case without any merit and liable to be rejected. The relief sought by the Petitioner for reinstatement with temporary status etc., is untenable, as the Petitioner was never converted as a full time casual worker as per the claim formulated by the department. It is stated that as the Petitioner is not covered by the circular dated 18.4.1988 nor covered by the letter dated 16.9.1999; She can not be regularised in service. The Petitioner was engaged purely on temporary basis as part time sweeper for three hours per day w.e.f. 7.6.1988 so the Petitioner is not eligible for temporary status. Under the above circumstances the Respondent submitted that the Petitioner is not entitled for the relief sought for.

4. The Petitioner has filed an affidavit in support of her claim and got marked Photostat copies of documents which are Ex.W1 to W12. On the other hand, the Management has filed the evidence affidavit of one Sri S. Venkata Ramulu, SDE, Telecom, in support of their claim, but have not relied on any document.

5. I have already heard the Learned Counsels for both the sides.

6. The Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was initially appointed as a part time sweeper in the office of the Assistant Engineer under the 3rd Respondent in the Department of Telecommunication, overall from 7.6.1988 to 21.2.1992. Later she worked in the same capacity for 1499 days from 24.1.1992 to 9.6.97 in the office of SDE., Coaxial Maintenance (DT), Saifabad, Hyderabad. The Petitioner worked in the post diligently without any remark and without any break in service. It is further contended that the Government of India, Department of Telecommunications ordered for conversion of all the part time casual labourers working for 4 or more than 4 hours per day into full time casual labours and subsequently for conversion of part time labourers working for less than 4 hours per day also into full time casual labourers and thus the same orders were reiterated by DOT vide letter NO.269-10/97/STN-II dated 29.9.2000. In view of the orders of the Department of Telecom the Petitioner is eligible for conversion into full time casual labour and for subsequent regularization. The case of the Petitioner has been considered for conversion from part time to full time casual labour but unfortunately without considering the above facts, the first Respondent vide his office letter No.TA/STA/20-50/HTD/2004/6 dated 25.9.2004 issued an order contending that there was no approval for engagement of the Petitioner as a part time casual labourer and directed the Principal General Manager, HTD, to ask the Petitioner to report to the 2nd Respondent, with a further direction to the 2nd Respondent to retrench the Petitioner from service as per the provisions of the Industrial Disputes Act as there is no work. It is also contended that lastly 3rd Respondent vide his letter No.E-9/II LM HD/97-98 dated

6.10.2004 passed order for retrenchment of the Petitioner from service without giving any notice as per the provisions of Sec.25F of the Industrial Disputes Act or U/s. 25-FFF of the Industrial Disputes Act. Subsequently the Petitioner approached the Principal General Manager (BSNL), by filing a representation to consider her case sympathetically. Thereafter, she has also approached the Assistant Labour Commissioner(Central), Hyderabad for settlement of her grievance on 26.2.2005, but after prolonged discussions, there was no settlement arrived between the Petitioner and the Respondents. It is contended that even though the Petitioner is entitled for regularization of her service, she has not been regularised but, other temporary workers have been regularised in the place of the Petitioner. Admittedly the Petitioner has worked under the Respondents from 7.6.88 as a part time sweeper cum water woman at three hours per day and she has been terminated from service on 6.10.2004 and as such the Petitioner has worked for about 15 years as a part time casual labourer and she assumed as a worker within the definition of Industrial Disputes Act, 1947 and she is entitled to the benefit of conversion into full time casual labourer and also consequential absorption. It is further contended that the name of the Petitioner was recommended for conversion into full time casual labour, but instead of confirming her as a full time casual labourer the Respondent retrenched the Petitioner from service in utter violation of the provisions of Sec.25F of the Industrial Disputes Act, 1947 without giving her any notice or one month pay in lieu of notice and other benefits.

7. On the other hand the Learned Counsel appearing on behalf of the Respondents contended that the contentions of the Petitioner that she was fully eligible for conversion from part time labourer to full time labourer is incorrect and it can be effected only if there are vacancies in Group D cadre and the proceeding dated 28.1.2002 was only for information regarding conversion within the parameters of the scheme formulated by the Department for the said purpose. It is also contended that as the Petitioner was working in a project and the same is closed due to completion of the work, the provision of Sec.25F has no application. It is also contended that the Petitioner can not be compared at par with other regular employees working in the Department and as such for casual service as a part time sweeper the Petitioner had been engaged and was terminated on closure of the project office in the Department of Telecom (Transmission and Maintenance) at Secunderabad. Therefore, the submission with regard to application of Sec.25F for the case of the Petitioner is without any merit and is liable to be rejected. It is also contended that the contention of the Petitioner to grant temporary status and regularization is misconceived and baseless and as such the Petitioner is not entitled to the benefit as per the circular dated 18.11.1988. In terms of the circular dated 18.11.1988 only those part time casual labourers who had rendered 7 years of service as on 31.3.1987 were eligible to be regularised against the post created subject to the fulfilment of certain other conditions containing in that circular. Since the Petitioner has not fulfilled the above conditions she is not entitled for regularization.

8. The counsel for the Respondents contended that the Petitioner who was working on daily wage basis will not get any right or claim for the permanent job. In view of the judgement reported in 2006(4) at page 197 decided in the case of Secretary of the State Government of Karnataka, Vs. Umadevi and others, and further contended that every workman has to be recruited as per the established procedure and rules and also contended that the project in which the Petitioner has worked was closed and as such the Petitioner was retrenched from service, and she has no right to get any relief.

9. It has to be decided whether the Petitioner is entitled to get temporary status in view of the regulation of Casual Labour (grant of temporary status & regularization) Scheme, 1989. According to the said scheme temporary status would be conferred on the casual labourers employed as on 17.11.1988 and who had rendered continuous service of atleast one year. Out of which they must have been engaged on work for a period of 240 days. Since the Petitioner was not engaged before 30.3.1985 and she was not on rolls as on 17.11.1988, the Petitioner is not eligible for confirmation of temporary status on the basis of the above scheme. Further the aforesaid scheme is only applicable to full time casual labour. It is seen that the Petitioner has worked under the Respondent for a period of 15 years, she had been urged to submit her application in a prescribed format for her regularization, and pursuant to the direction of the DGM, the Petitioner had filed the application. Ex.W10 indicates that the Divisional Engineer, Acceptance Testing, had requested the Principal General Manager, Hyderabad Telecom District, Suryalok Complex, Hyderabad to accommodate the Petitioner in the Department as she is working in the office of Transmission Maintenance, Secunderabad as a sweeper against the sanction of CGMT AP HD No.TA/EST/6-10/97 dated 2.6.97. The Petitioner has worked as a sweeper from 7.6.1988 to 21.2.1997 and for a period of 1499 days from 24.2.1992 to 9.6.97 continuously and the Respondents have not disputed the service of the Petitioner as well as Ex.W8 and W10 are concerned. Ex.W6 clearly indicates that the Government of India, Department of Telecom vide its order No.269-13/99-STN-II dated 25.8.2000, passed order for conversion of part time casual labourers working for less than 4 hours per day into full time casual labourers. When the case of the Petitioner was recommended by the Divisional Engineer, as per Ex.W10 for her accommodation, it is not known why her case was not considered. The Petitioner has also made a representation to the Assistant Labour Commissioner(Central) to accommodate her in any other identical post in the Hyderabad Telecom District, but the Respondents did not consider her case rather issued notice under Ex.W11 for her retrenchment. The Petitioner has worked for more than 15 years continuously as a part time worker and she comes under the definition of workman under the Industrial Disputes Act. While the Petitioner was retrenched, the Respondents are expected to retrench the workman as per the proceeding under Sec.25F of the Industrial Disputes Act, 1947. The Respondents had simply terminated the Petitioner by sending a notice. Therefore, the termination or retrenchment of the Petitioner is in violation of Sec.25F of the Industrial Disputes Act, 1947. Though the Respondent

has not given any notice indicating the reasons for retrenchment and further the Petitioner was not paid one month wages in lieu of the notice and further the Petitioner was not paid the retrenchment compensation of 15 days average pay for every completed year of service. The retrenchment or termination of the Petitioner is illegal and not justified.

This point is answered accordingly.

10. **Point No.II:** In view of the circumstances stated above, I hold the termination of the service of the Petitioner w.e.f. 1.11.2002 is illegal and not justified and the Respondent is directed to reinstate the Petitioner in any post suitable to her. It is further directed that the Respondent should consider the Petitioner for conversion into full time casual labourer according to the relevant scheme and rules. If the Petitioner is found not eligible under the said rules for conversion into full time casual labourer, the Respondent is at liberty, to retrench the Petitioner only by following the procedure laid down for retrenchment under the Industrial Disputes Act, 1947.

Result:

In the result, the reference is answered as follows:

“The action of the management of Bharat Sanchar Nigam Ltd., Hyderabad in terminating the services of Smt. K. Saraswathi, Ex-part time sweeper with effect from 1.11.2004 is illegal and unjustified. The Respondent is directed to reinstate the Petitioner in any post suitable to her. It is further directed that the Respondent should consider the Petitioner for conversion into full time casual labourer according to the relevant scheme and rules. If the Petitioner is found not eligible under the said rules for conversion into full time casual labourer, the Respondent is at liberty to retrench the Petitioner only by following the procedure laid down for retrenchment under the Industrial Disputes Act, 1947.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 11th day of July, 2016.

MURALIDHAR PRADHAN , Presiding Officer

Appendix of evidence

Witnesses examined for the
Petitioner

WW1: Smt. K. Saraswathi

Witnesses examined for the
Respondent

MW1: Sri S. Venkata Ramulu

Documents marked for the Petitioner

Ex.W1: Photostat Copy of certificate of employment in Respondent organization dt.30.6.1990.
Ex.W2: Photostat Copy of certificate of employment in Respondent organization dt.21.2.1992
Ex.W3: Photostat Copy of certificate of employment in Respondent organization dt. 8.9.1998
Ex.W4: Photostat Copy of certificate of employment in Respondent organization dt.2.6.1997
Ex.W5: Photostat Copy of Ir.No.269-13/99-STN-II dt.16.9.1999
Ex.W6: Photostat Copy of Ir.No.269-13/99-STN-II dt. 25.8.2000
Ex.W7: Photostat Copy of DOT Ir.No.269-10/97-STN-II dt. 29.9.2000
Ex.W8: Photostat Copy of BSNL Lr No.DGMTM/F-2/2001-2002 dt.28.1.2002
Ex.W9: Photostat Copy of BSNL Lr No.TA/STA/20-50/HTD/2004/6 dt.25.9.04
Ex.W10:Photostat Copy of BSNL Lr No.E-9/II LM HD/97-98 Dt.5.10.2004
Ex.W11:Photostat Copy of BSNL Lr No.E-9/II LM HD/97-98 Dt.6.10.2004
Ex.W12:Photostat copy of Petitioner's representation dt.30.10.2004

Documents marked for the Respondent

NIL

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1556.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कोयम्बटूर मुरुगन मिल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 102/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/103/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 102/2015) of the Central Government Industrial Tribunal-Cum-Labour-Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Coimbatore Murugan Mills and their workman, which was received by the Central Government on 22.07.2016.

[No. L-42012/103/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Tuesday, the 12th July, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 102/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Coimbatore Murugan Mills and their workman)

BETWEEN

Miss M. Radha : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent
M/s. Coimbatore Murugan Mills
(Unit of National Textiles Corporation Ltd.)
Mettupalayam Road,
Coimbatore-641043

Appearance:

For the 1st Party/Petitioner : Sri G. Muthu
For the 2nd Party/Respondent : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-42012/103/2015-IR (DU) dated 01.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the dismissal of Smt. M. Radha by the Management of Coimbatore Murugan Mills, Coimbatore is legal and justified? If not, to what relief the petitioner is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 102/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has joined service in the Cone Winding Department of the Respondent establishment on 11.06.1984. She had been working without any complaint. On 07.04.2002 a Show-Cause Notice was issued on the petitioner. The Attendance Register particulars from 2007 to 2012 was also furnished in a paper. This showed the working days, absent days and leave days of the petitioner. The Respondent, thereafter, conducted a domestic enquiry without following the principles of natural justice. The petitioner was issued a Second Show-Cause stating that her past record of attendance was not satisfactory. The details of absence, leave, working days, etc. were shown in this also. However, the petitioner was not allowed to verify the details with the Attendance Register. The Respondent dismissed the petitioner from service on 29.06.2013. The dispute is raised accordingly. The action of the Respondent in dismissing the petitioner from service is vindictive in nature. It was not alleged in the Show-Cause Notice that the petitioner was a habitual absentee. The records pertaining to the alleged habitual absence were not marked in the enquiry proceedings. The petitioner has stated before the Enquiry Officer that her absence was due to her illness. This was not taken into account by the Officer. The dismissal of the petitioner from service is illegal. The petitioner is entitled to be reinstated in service with backwages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner was employed as Cone Winder in the Respondent establishment. From the year 2007, the petitioner became a chronic absentee. She was not working even for 240 days in a calendar year. She had been unauthorizedly absent for several days on all years from 2007 to 2012. Though the petitioner has stated that she was absent from work due to ill-health, she had not produced any sickness certificate. Absence covered by ESI Certificate is not treated as unauthorized absence or absence without leave. Every year the Management used to review the Attendance of the workman and if the attendance is less than 200 days such of those employees with irregular attendance will be admonished. On several occasions disciplinary actions were initiated against the petitioner for unauthorized absence and opportunities were provided to correct herself. In the year 2011, out of the 302 available working days the petitioner absented for 151 days and turned up for work for 146 days only. Even between January and march 2012 her absenteeism continued. So a Show-Cause Notice was issued on 07.04.2012 referring to her habitual absence and calling upon her to show-cause why disciplinary action shall not be taken against her. In the explanation submitted by her she stated that she was in ill-health and her family situation also was bad and these are the reasons for her absence. She assured to be regular in work thereafter. But even thereafter she remained absent from work unauthorizedly. She had participated in the enquiry conducted on 08.06.2012 and 28.07.2012. The Enquiry Officer gave report holding her guilty of the charge. A Second Show-Cause Notice was given to her proposing the punishment of dismissal from service. She gave an explanation to this admitting her unauthorized absence and agreeing to be regular in work in future. On account of this, the disciplinary action was kept in abeyance. However, in the subsequent months also she was continuously absent. She was dismissed from service by order dated 29.06.2013.

The petitioner is not entitled to any relief

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating her case in the Claim Statement.

6. The contention of the petitioner that the domestic enquiry was not conducted in accordance with the principles of natural justice was heard as a Preliminary point and the same was found against the petitioner.

7. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M38.

8. **The points for consideration are:**

- (i) Whether dismissal of the petitioner from service by the Respondent is legal and justified?
- (ii) What, if any, is the relief to which the petitioner is entitled?

The Points

8. The petitioner who was working as a Cone Winder in the Respondent establishment was dismissed from service consequent to the result of the domestic enquiry on the charge that she had been unauthorizedly absent from work for several days in the year 2011 and in the first 3 months of 2012. It is alleged by the petitioner that there is no justification for the Respondent in dismissing her from service.

9. Ext.M27 is the copy of the Show-Cause Notice issued to the petitioner on account of her alleged unauthorized absence. In this it is stated that the petitioner has been continuously and frequently absent from duty, that she is habitual in absenteeism and that she had been unauthorizedly absent for 151 days in the year 2011, 25 days in January 2012, 23 days in February 2012 and for the same number of days in March 2012 also. Ext.M28 is the explanation given by the petitioner for the Show-Cause Notice. In this she has stated that she is regretting the absence, that her health was affected frequently and her family circumstances were not smooth and these were the reasons for not attending her

duties on the days mentioned in Ext.M27. She has given assurance in her explanation that in the future she would be prompt in duty as her health condition has improved and her family situation has become normal.

10. Ext.M30 is the letter by the Management to the petitioner informing her that the explanation given by her by Ext.M28 is not satisfactory and the Management has decided to conduct an enquiry on the charges framed against her. The name of the Enquiry Officer and the date of the enquiry is also given in the letter. At the request of the petitioner the enquiry was adjourned. However, she has failed to attend the enquiry on the next hearing date and it was again adjourned. There was one more adjournment consequent to her failure to attend the enquiry. She participated in the enquiry held on 28.07.2012. She has stated during the enquiry that she is admitting the charge of absence from duty. She has further stated that her absence was due to her mother's illness and also because of her ill-health. Though she referred to the illness of herself and her mother during the enquiry proceedings she had not produced any document to show that there was valid reason for her absence. The documents pertaining to their illness if any, are not produced. She has stated during enquiry proceedings that she had gone to Tirupathi for treatment. However, she did not state during which period she had undergone treatment. She did not make a request for adjournment to prove her case also. This is in spite of the fact that a co-worker had been representing her in the proceedings. It has been pointed out by the counsel for the Respondent that the petitioner is covered by the ESI Scheme that the ESI Hospital is not far from her residence and yet she had not sought treatment from the said Hospital. If any certificate from ESI Hospital is produced, leave taken will not be treated as unauthorized absence, it is pointed out. Thus, it could be seen that the petitioner had admitted her unauthorized absence in the enquiry proceedings and had not made any attempt to prove the reasons for her absence before the Enquiry Officer. It was on the basis of the admission made by the petitioner that the Enquiry Officer has held that she was unauthorizedly absent for the days mentioned in the Show-Cause Notice. The petitioner had got herself examined before this Tribunal. However, she did not make any attempt to justify her absence here also by producing relevant documents.

11. Based on Ext.M33-the report of the Enquiry Officer, Ext.M24-the Show-cause Notice was served on the petitioner proposing punishments of dismissal of the petitioner. The copy of the enquiry proceedings, Enquiry Officer's report and the attendance details were attached to this Show-Cause Notice. Ext.M35 is the explanation submitted by the petitioner to the Show-Cause Notice. What she has stated in the explanation is that she regrets her absence. She had repeated in the explanation also that it was due to her illness and family circumstances she was not able to attend duty. She has also stated in this that she will be regular in work in future. The petitioner seems to have been allowed to continue in service based on her assurance. The proceedings was kept in abeyance. However, she continued to be irregular in duty even after Ext.M35. Ext.M36 the details of attendance after Ext.M35 shows that she was absent from duty for 15 days in August 2012, 13 days in September 2012, 9 days in October 2013, 13 days in November 2012 and 7 days in December 2012. In 2013 she had worked only on a limited number of days. She was absent for 22 days in January 2013, 19 days in February 2013, 27 days in March 2013, 25 days in April 2013 and 26 days in May 2013. On 29.06.2013 order of dismissal was issued to the petitioner on the charges upon which an enquiry was conducted. It could be seen from Ext.M37 that even after the proposal for dismissal, opportunity was given to the petitioner to improve herself in attendance but yet she had been continuously absent.

12. The Respondent has produced documents to show that the conduct of the petitioner in the past also was one of continuous unauthorized absence. Exts.M1 to Ext.M26 are the memos issued to the petitioner for unauthorized absence, explanations given by her, warnings given to her, etc. Notice is seen given to her for low production also. Whenever notices were issued on account of unauthorized absence the petitioner has been admitting her absence and giving the explanation of her ill-health. However, in spite of repeated notices, she was not resorting to the practice of applying for leave with reason. The documents pertaining to the past conduct of the petitioner produced by the Respondent would show that she was continuously irregular in duty from 1999 onwards. No doubt, production would be affected if such a person who is so irregular in work is in the roll of the establishment.

13. The counsel for the petitioner had referred to a decision of the Madras High Court in *MANAGING DIRECTOR OF TAMIL NADU STATE TRANSPORT CORPORATION VS. K.V. KRISHNAN AND ANOTHER* reported in 2010 4 LLJ 385 to justify the absence of the petitioner. However, the facts of the above case are not in *pari-materia* with the facts of the present case. It was a case of single incident of unauthorized absence. The Hon'ble High Court has held that the punishment of dismissal is disproportionate on the facts of the case. The decision in *COOPERATIVE STORE LTD. VS. RAMESH CHANDER* reported in 2015 1 LLJ 466 is also relied upon by the counsel for the petitioner. It was a case where the workman had promptly applied for leave and a part of the leave was sanctioned also. The other part was not sanctioned and this was treated as unauthorized absence. Even in this the High Court had directed payment of compensation only and did not set aside the order of removal from service. The decision in *GAURI SHANKAR VS. DEPUTY GENERAL MANAGER, STATE BANK OF INDIA* reported in 2016 1 LLJ 735 also is not applicable to the facts of the present case. It is not a case of absenteeism of the workman. The evidence against the workman was re-appraised and it was found that he is entitled to be reinstated in service. No doubt, in the present case also this Tribunal is competent to re-appraise the evidence given by the Enquiry Officer and find out if the charge was proved. However, the enquiry proceedings beyond doubt established the continuous absenteeism of the petitioner.

14. The counsel for the Respondent has referred to the decision in RAJINDER KUMAR VS. STATE OF HARYANA AND ANOTHER reported in 2016 1 LLN 267 (SC) in support of the case. In the above case a Head Constable had absented from duty while he was posted in Police Lines, on three occasions, extending to a total period of 37 days. The Apex Court had upheld the finding of the guilt of the employee but had set aside the punishment of dismissal and granted the punishment of Compulsory Retirement from service. In another decision in L&T KOMATSU LTD VS. N. UDAYA KUMAR reported in 2008 1 SCC 224 the Apex Court had found that absence of 105 days of a workman who had been in the past found guilty for unauthorized absenteeism several times cannot be justified and had set aside the award of the Labour Court directing reinstatement of the workman without backwages and revived the order of the Disciplinary Authority dismissing the workman. In the present case also the petitioner has a history of habitual absenteeism on several occasions and had not improved herself even after opportunity was given to her to improve her attendance, even keeping the proceedings in abeyance. The petitioner who is not interested in work could not be reinstated in the job she was.

15. No doubt the petitioner was a habitual absentee. However, the fact remains that he had been in the service of the Respondent from 1984. Except for her habitual absence no charge of other misconducts have been faced by her ever. When this fact is taken into account, somewhat lesser punishment would not be inappropriate. The Standing Orders produced by the Respondent and marked as Ext.M1 does not give Compulsory Retirement as a punishment for misconduct. Still rather than dismissal punishment of Compulsory Retirement from service will be proper when the circumstances are taken into account.

16. In view of my above discussion, the punishment of dismissal from service imposed on the petitioner is set aside and the punishment of Compulsory Retirement from service is imposed on her.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th July, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Smt. M. Radha
For the 2nd Party/Respondent : MW1, Sri R. Seenivasagan

Documents Marked:

On the Petitioner's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	-	Copy of Time Card
Ext.W2	-	Copy of Death Certificate of Mother
Ext.W3	-	Copy of Death-Medical Report of Mother
Ext.W4	-	Copy of Right to Information Act – Report
Ext.W5	-	Copy of Management reply against RTI questions
Ext.W6	-	Copy of Condone delay – Industrial Tribunal order letter
Ext.W7	-	Copy of letter to Management for Advocate Fee

On the Management's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.M1	-	Copy of Certified Joint Standing Orders of the Respondent Mills
Ext.M2	07.12.1999	Memo for low production
Ext.M3	08.12.1999	Reply of the petitioner to the above memo
Ext.M4	19.02.2000	Memo
Ext.M5	22.02.2000	Reply of the petitioner for the above memo
Ext.M6	11.04.2000	Memo for unauthorized absence from 01.03.2000 to 11.04.2000 and warned

Ext.M7	11.09.2000	Memo for unauthorized absence from 09.08.2000 to 11.09.2000
Ext.M8	12.09.2000	Explanation of the petitioner to the memo dated 11.09.2000
Ext.M9	18.09.2000	Punishment – Suspension for one day on 22.09.2000 (for memo dated 11.09.2000)
Ext.M10	26.11.2000	Memo for unauthorized absence from 09.10.2000 to 26.11.2000
Ext.M11	03.12.2000	Petitioner's explanation to the memo dated 26.11.2000
Ext.M12	05.12.2000	Suspension for 1 day as punishment on 09.12.2000 (for memo dated 26.11.2000)
Ext.M13	07.06.2001	Unauthorized absence for 8 days in May 2001
Ext.M14	12.06.2001	Petitioner explanation to the memo dated 07.06.2001
Ext.M15	15.06.2001	Punishment – warning – Reference memo dated 07.06.2001
Ext.M16	14.02.2002	Memo for unauthorized absence for 6 days in January 2002
Ext.M17	16.02.2002	Petitioner explanation to the memo dated 14.02.2002
Ext.M18	21.02.2002	Punishment – Warned – Reference memo dated 14.02.2002
Ext.M19	07.10.2002	Memo for unauthorized absence for 6 days in September 2002
Ext.M20	11.10.2002	Explanation to the memo dated 07.10.2002
Ext.M21	06.04.2004	Memo for unauthorized absence for 6 days in March 2004 and let off with a warning
Ext.M22	07.06.2004	Memo for unauthorized absence for 6 days in May 2004 – Warned and let-off giving an opportunity to correct herself
Ext.M23	29.05.2006	Warning letter given for habitual unauthorized absence – for absenting on Sundays which are her working days in May 2006
Ext.M24	07.06.2006	Memo for 11 days unauthorized absence in May 2006 (no explanation given)
Ext.M25	10.03.2007	Memo for unauthorized absence for 8 days in Feb. 2007 – Warned for 2 nd time giving opportunity to correct Herself
Ext.M26	07.07.2009	Memo for unauthorized absence for 20 days in June 2009 (no explanation given)
Ext.M27	07.04.2012	Show Cause Notice issued to the petitioner
Ext.M28	11.04.2012	Explanation of the petitioner to the Show Cause Notice dated 07.04.2012
Ext.M29	18.05.2012	Notice of enquiry with reference to the memo dated 07.04.2012 – Enquiry on 29.05.2012 Enquiry Notice returned – undelivered – REFUSED (copy of the letter & unopened returned cover attached)
Ext.M30	28.05.2012	As 18.05.2012 notice has been returned as refused – Another enquiry notice dated 28.05.2012 sent – fixing the date of enquiry on 08.06.2012 (Received – Acknowledgement filed)
Ext.M31	13.06.2012	(i) Petitioner not attended the enquiry on 13.06.2012 – to provide further opportunity, enquiry posted to 30.06.2012 (received 21.06.2012 and acknowledgement filed)
	18.07.2012	(ii) Notice of enquiry – given final opportunity – posted the enquiry on 28.07.2012 – failing which she will be set ex-parte & proceeded (received by petitioner on 21.07.2012 acknowledgement filed)
Ext.M32	08.06.2012	Enquiry Proceedings
	28.07.2012	
Ext.M33	04.08.2012	Findings of the Enquiry Officer
Ext.M34	06.08.2012	Second Show Cause Notice proposing punishment of dismissal from service enclosing copy of

		(i) Enquiry Proceedings
		(ii) Enquiry Officer's Report
		(iii) Attendance details (received by petitioner – acknowledgement filed)
Ext.M35	16.08.2012	Explanation of the petitioner for the second show cause notice dated 06.08.2012
Ext.M36	-	Attendance details from August 2012 to till date of Dismissal
Ext.M37	29.06.2013	Order – Dismissing the petitioner effective from 29.06.2013 (enclosing copy of approval petition and cheque towards one month's notice pay) received by petitioner acknowledgement filed
Ext.M38	21.07.2014	Memo filed by the counsel for Miss Radha before the Industrial Tribunal, Tamil Nadu, Chennai – in Approval Petition No. 57/2013 – praying to grant approval without prejudice to his right to raise Industrial Dispute regarding the non-employment

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कोयम्बटूर मुरुगन मिल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 103/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/104/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 103/2015) of the Central Government Industrial Tribunal-Cum-Labour-Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Coimbatore Murugan Mills and their workmen, which was received by the Central Government on 22.07.2016.

[No. L-42012/104/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT CHENNAI

Tuesday, the 12th July, 2016

Present : K.P. PRASANNA KUMARI

Presiding Officer

Industrial Dispute No. 103/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Coimbatore Murugan Mills and their workman)

BETWEEN

Sri J. Jagatheeswaran : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent

M/s Coimbatore Murugan Mills

(Unit of National Textiles Corporation Ltd.)

Mettupalayam Road, Post Box No. 7004

Coimbatore-641043

Appearance:

For the 1st Party/Petitioner : Sri G. Muthu
For the 2nd Party/Respondent : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/104/2015-IR (DU) dated 01.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the dismissal of Sri J. Jagatheeswaran by the Management of Coimbatore Murugan Mills, Coimbatore is legal and justified? If not, to what relief the petitioner is entitled to?”

2. On receipt of the notice, this Tribunal has numbered it as ID 103/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined in the Cone Winding Department in the Respondent Management on 11.05.1982. The petitioner was working without any complaint. He was obeying the reasonable orders of his superiors. The Respondent issued Show Cause Notice dated 19.06.2012 to the petitioner supplying the Attendance Register particulars from 2007 to 2012. It was issued deliberately to terminate the petitioner from service. The Respondent conducted a domestic enquiry without following the principles of natural justice. The Respondent issued another Show Cause Notice stating that the past record of the petitioner regarding attendance was not satisfactory. The Respondent issued an order of dismissal to the petitioner on 29.06.2013. The action of the Respondent is vindictive in nature. The Show Cause notice issued to the petitioner did not allege that he was a habitual absentee. Charges were framed for the absence during the year 2011 and for two months in 2012. The petitioner's absence from work was on account of his illness. The Respondent is not justified in dismissing the petitioner from service. An order may be passed directing reinstatement of the petitioner in service with continuity of service, backwages and other benefits.

4. The Respondent has filed Counter Statement contending as below:

The Respondent establishment is a factory registered under the Factories Act. The workmen of the Mill are granted Earned Leave at the rate of one day for every 20 days of work. Workmen who are eligible for Earned Leave are also eligible to avail 5 days Casual Leave. Quarters are allotted to workmen depending upon the availability. The petitioner was allotted a quarters. From the year 2007 the petitioner became a chronic absentee. He was not working even for 240 days in a calendar year from the year 2007 to 2012. The absence of the petitioner were without any leave and therefore unauthorized. In the year 2011 alone the petitioner absented for 159 days out of the 302 available working days. His absenteeism continued upto the middle of June 2012. He worked only for 15 days in August and 14.5 in September. He did not work even for a single day in July, October and November 2012. Subsequently also he worked for very few days. On 19.06.2012 a Show Cause Notice was issued to him to show cause why disciplinary action shall not be taken against him. He gave an explanation stating that he had to attend on his wife who was suffering from Cancer and Sugar complaints. In the enquiry he accepted the charge and pleaded that had he to be at the bedside of his wife. The Enquiry Officer submitted report holding the petitioner guilty of the charge. A Second Show Cause Notice was given to him on 06.08.2012 proposing the punishment of dismissal. In the explanation he stated that he would be attending work properly in the future. On his request further disciplinary action was kept in abeyance. However, even thereafter he continued to be absent. So punishment of dismissal was awarded to him on 29.06.2013. The petitioner is not entitled to any relief.

5. In the rejoinder filed the petitioner has denied the averments in the Counter Statement and reiterated his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W8 and Ext.M1 to Ext.M27.

7. **The points for consideration are:**

- (i) Whether the action of the Respondent in dismissing the petitioner from service is justified?
- (ii) What, if any, is the relief to which the petitioner is entitled?

The Points

8. The petitioner who was working in the Cone Winding Department of the Respondent establishment was dismissed from service on account of his chronic alleged absence. The dispute is raised challenging his dismissal.

9. The petitioner has raised a contention in the Claim Statement that the domestic enquiry resulting in his dismissal from service was not conducted in accordance with the principles of natural justice. This issue has been heard as a Preliminary Issue and was decided against the petitioner.

10. In the Proof Affidavit filed by the petitioner he has stated that the circumstances leading to his absence from work was not considered by the Respondent while deciding to dismiss him from service.

11. The petitioner's date of birth being 04.05.1958 he might have retired from service by this time if he was still in employment, the age of retirement in the Respondent establishment being 58.

12. The case of the Respondent is that the petitioner was a habitual absentee in service and apart from the period of absence mentioned in the Charge Memo issued to him upon which domestic enquiry has been conducted against him he was continuously absent from work even earlier and even after proceedings has been started against him.

13. The documents pertaining to the enquiry are produced by the Respondent. It is to be seen from these whether there was justification for the Respondent in finding the petitioner unauthorizedly absent and sending him away from service. Ext.M17 is the Show Cause Notice that was issued to the petitioner stating that he was unauthorizedly absent from work for 159 days in the year 2011 and so also he had absented from work for 10 days in April, 20 days in May and 16 days in June 2012. Ext.W18 is the explanation given by the petitioner to the said Show Cause Notice. He has stated in this that his wife was suffering from Cancer for three years and she is a diabetic patient also and that it was because he has to take care of her he was absenting from work. Finding the explanation unsatisfactory enquiry proceedings was initiated by the Respondent. In the enquiry proceedings also the petitioner seems to have stated that his absence was on account of his wife's illness. But he had not produced any documents in support of his case. The Enquiry Officer found that the petitioner was unauthorizedly absent during the days mentioned in the Show Cause Notice and submitted a report finding him guilty of habitual absence. The report is marked as Ext.M22. Thereafter, Ext.W23 Show Cause Notice was issued to the petitioner by the Respondent proposing the punishment of dismissal from service, alongwith a copy of the enquiry proceedings, Enquiry Officer's Report, attendance details, etc. The petitioner submitted Ext.M24 explanation to the Show Cause Notice. He has repeated in this that his wife had been undergoing treatment for Cancer and he had incurred a lot of expenditure. He has stated in this that there is improvement in the health of his wife and he will be able to attend the work regularly. As could be seen from the evidence of MW1, the Respondent kept the proceedings in abeyance on account of the assurance given by the petitioner that he will be attending work regularly. However, as is the case of the Respondent and not disputed by the petitioner, he was absent from work again. Ext.M25 is the Attendance details of the petitioner from August 2012 in which month the petitioner had given the assurance, till the date of his dismissal. As seen from this document he had worked only for a very few days during 2013 until he was dismissed from service on 29.06.2013.

14. As could be seen from the enquiry proceedings and also the evidence before this Tribunal there is no dispute for the petitioner about his unauthorized absence from work as shown in Ext.M17. The only contention that is now raised by him is that the circumstances under which he had absented himself from work were not considered by the Respondent. I have already referred to the two explanations given by the petitioner and his statement before the Enquiry Officer which refers to illness of his wife and the mental trauma suffered by him consequently. During examination of MW1 he has stated that he knew from the records that the wife of the petitioner was suffering from Cancer and he came to know after the dismissal of the petitioner that his wife died of Cancer. As seen from Ext.W3 the wife of the petitioner died on 01.07.2014. So it is beyond doubt that the petitioner's wife was suffering from Cancer and died of the illness, a year after dismissal of the petitioner.

15. It could not be stated that the Respondent was not considerate of the plight of the petitioner. On account of explanation given by the petitioner the proceedings against him was kept in abeyance and imposition of the punishment was postponed and opportunity was given to the petitioner to attend work and be regular in work. However, the petitioner continued to be a chronic absentee probably on account of the illness of his wife. No documents are available to show from which time the illness started and for which period she was under treatment.

16. Even if the absence of the petitioner during the period shown in the Show Cause Notice is taken to be on account of the illness of his wife the past absence of the petitioner has not been justified by him. Ext.M1 to Ext.M16 are documents showing the unauthorized absence of the petitioner on various occasions starting from 1995 and upto 2002. The petitioner has been receiving warning notices and Show Cause Notices and giving explanations for the unauthorized absence. These documents spell out that the petitioner was in the habit of absenting himself continuously without any notice to the establishment causing dislocation in work. However, reason for the petitioner's absence during the period for which enquiry was held should have been taken into account. The Respondent has not considered this. To this extent the order of dismissal by the Respondent is liable to be interfered with. The petitioner is entitled to an order of reinstatement. However, he having attained the age of superannuation, a direction for reinstatement could not be given. He would be deemed to have been in service from the date of his dismissal till the date on which he reached the age of superannuation.

17. On the basis of above discussion, the petitioner is deemed to have been in service from 29.06.2013 till 03.05.2016, the date on which he reaches the age of superannuation. He will be entitled to 25% of the backwages and all other corresponding benefits.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th July, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri J. Jagadeeswaran
For the 2nd Party/Respondent : MW1, Sri R. Seenivasagan

Documents Marked:

On the Petitioner's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	-	Copy of Time Card
Ext.W2	19.07.2012	Copy of Medical Slip
Ext.W3	01.07.2014	Copy of Death Certificate of Mrs. Malathi
Ext.W4	-	Copy of Medical Report – Mrs. Malathi
Ext.W5	-	Copy of Right to Information Act – Report
Ext.W6	-	Copy of Management Reply against RTI questions
Ext.W7	-	Copy of condone delay – Industrial Dispute Order Letter
Ext.W8	-	Copy of letter to Management for Advocate Fee

On the Management's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.M1	-	Copy of Certified Joint Standing Order of the Respondent Mills
Ext.M2	22.02.1995	Warning notice issued for unauthorized absent for 7 days during the month of January 1995
Ext.M3	02.11.1995	Warning notice for unauthorized absent on 02.11.1995
Ext.M4	04.12.1995	Final warning notice issued for unauthorized absent for 20 days during the month of November 1995
Ext.M5	04.12.1995	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M6	10.09.1998	Warning notice issued for unauthorized absence for 7days during the month of August 1998
Ext.M7	06.03.1998	Warning notice for 9 days unauthorized absent during the month of February 1999
Ext.M8	03.09.1999	Warning notice for 9 days unauthorized absent during the month of august, 1999
Ext.M9	13.06.2000	Show Cause Notice issued for 20 days unauthorized absent during the month of May, 2000
Ext.M10	18.06.2000	Explanation- Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M11	26.06.2000	Suspended for 2 days as punishment on 03.07.2000 – 04.07.2000
Ext.M12	08.03.2002	Show Cause Notice issued for 6 days unauthorized absent during the month of February 2002
Ext.M13	19.03.2002	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M14	08.04.2002	Warned – reference to the notice dated 08.03.2002

Ext.M15	11.11.2002	Show Cause Notice issued for absenting from 3 rd November, 2002 to till date of issue of notice
Ext.M16	11.11.2002	Suspended for 2 days as punishment on 11.11.2002 – 12.11.2002
Ext.M17	19.06.2002	Show Cause Notice issued to the petitioner (received on 25.06.2012 and acknowledgement filed)
Ext.M18	29.06.2012	Explanation of the petitioner to the notice dated 19.06.2012
Ext.M19	09.07.2012	Notice of enquiry on the memo dated 19.06.2012 – Enquiry on 18.07.2012
Ext.M20	18.07.2012	Proceedings of the enquiry – At request of petitioner enquiry adjourned to 28.07.2012
Ext.M21	28.07.2012	Enquiry Proceedings – Petitioner participated (total proceedings – three pages 34-36)
Ext.M22	04.08.2012	Findings of the Enquiry Officer
Ext.M23	06.08.2012	Second Show Cause Notice proposing punishment of dismissal from service enclosing copy of <ul style="list-style-type: none"> (i) Enquiry Proceedings (ii) Enquiry Officer's report (iii) Attendance details
Ext.M24	16.08.2012	Explanation of the petitioner for the second show cause notice dated 06.08.2012
Ext.M25	-	Attendance details from August 2012 to till date of dismissal (i.e. till June 2013)
Ext.M26	29.06.2013	Order – dismissing the petitioner effective from 29.06.2013 (enclosing copy of approval petition and cheque towards one month's notice pay). Received by petitioner acknowledgement card
Ext.M27	21.07.2014	Memo filed by the counsel for Mr. Jagadeeswaran before the Industrial Tribunal, Tamil Nadu, Chennai – in Approval Petition No. 56/2013 – Praying to grant approval without prejudice to his right to raise Industrial Dispute regarding the non-employment

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कोयम्बटूर मुरुगन मिल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 104/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/105/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 104/2015) of the Central Government Industrial Tribunal-Cum-Labour-Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Coimbatore Murugan Mills and their workman, which was received by the Central Government on 22.07.2016.

[No. L-42012/105/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT
CHENNAI****Tuesday, the 12th July, 2016****Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 104/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Coimbatore Murugan Mills and their workman)

BETWEEN :Smt. K.C. Sudha : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent

M/s Coimbatore Murugan Mills

(Unit of National Textiles Corporation Ltd.)

Mettupalayam Road, Post Box No. 7004

Coimbatore-641043**Appearance:**For the 1st Party/Petitioner : Sri G. MuthuFor the 2nd Party/Respondent : M/s T.S. Gopalan & Co., Advocates**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/105/2015-IR (DU) dated 01.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the dismissal of Smt. K.C. Sudha by the Management of Coimbatore Murugan Mills, Coimbatore is legal and justified? If not, to what relief the petitioner is entitled?”

2. On receipt of the notice, this Tribunal has numbered it as ID 104/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined duty in the Respondent establishment on 11.04.1984. She was obeying the orders of her superiors. The Respondent issued Show Cause Notice to the petitioner on 18.05.2012 alongwith Attendance Register particulars from 2001 to 2012. Thereafter the Respondent conducted domestic enquiry without following the principles of natural justice. Based on the report of the Enquiry Officer the petitioner was dismissed from service on 29.06.2013. There is no justification for the dismissal of the petitioner. An order may be passed directing the Respondent to reinstate the petitioner in service with full backwages, continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner who was working in the Cone Winding Department of the Respondent had become a chronic absentee from the year 2005. Throughout the years from 2005 to June 2012 she had worked only for a limited number of days. Her absence were without leave and unauthorized. In the year 2011 out of the three hundred and two available working days she absented on 117.5 working days. Her absenteeism continued upto the middle of May 2012. So a Show Cause Notice was issued on 18.05.2012 calling upon her to show cause why action shall not be taken against her. Not satisfied with her explanation she was asked to appear for an enquiry. She has accepted the charge in the enquiry and has pleaded that she was ill. The Enquiry Officer found her guilty of the charge by report dated 04.08.2012. A Second Show Cause Notice was issued to her on 06.08.2012 proposing the punishment of dismissal from service. In the explanation submitted by her she has stated that she would be reporting for work regularly in future. So further proceedings was kept in abeyance. However, there was no improvement in her attendance thereafter also. So, the Respondent dismissed the petitioner from service by order dated 29.06.2013. The petition is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the contentions in the Counter Statement and reiterating her case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M15.

7. **The points for consideration are:**

- (i) Whether the action of the Respondent in dismissing the petitioner from service is legal and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner had been dismissed from service by the Respondent on account of the alleged chronic absenteeism on her part. According to the petitioner, there is no justification for the order of dismissal.

9. The Respondent has stated in the Counter Statement that the petitioner was unauthorizedly absent for several working days from the year 2005 to 2012. Show Cause Notice was issued to the petitioner for the absence of 117.5 of 302 working days in the year 2011 and also 95 days for the months upto May 2012. In reply to the Show-Cause Notice which is marked as Ext.M2, the petitioner has given an explanation which is marked as Ext.M3. In her explanation she has admitted that she was absent during the days mentioned in the Show Cause Notice. What she has stated in her explanation is that she was not keeping in good health and have been taking continuous treatment and it is because of this she was not able to report for work. She has further stated that there was improvement in her health at the time of giving her explanation.

10. An enquiry was conducted against the petitioner. During the enquiry proceedings also she has admitted that she was absent from work without any intimation. Though, she has pleaded ill-health as the reason for her absence, she has not submitted any documents before the Enquiry Officer to prove this. The Enquiry Officer found her guilty of unauthorized absenteeism and submitted report to this effect. Consequently, Ext.M9 Show-Cause Notice was issued to her proposing punishment of dismissal from service alongwith copy of the report of the Enquiry Officer, attendance details, etc. Ext.M10 is the explanation given by the petitioner to this Show Cause Notice. She has stated in this that she was anemic and was also allergic. She has stated that there is improvement in her health and she will be reporting for work regularly. Further proceedings was kept in abeyance on account of her assurance that she would be attending work regularly. However, as seen from Ext.M11 the attendance details in respect of the period from August 2012, the petitioner continued to be absent thereafter also. In the last five months of 2012 she was absent for 77 days and from January to June 2013 she was absent for 159 days. Thus, in spite of her assurance, her chronic absenteeism continued even after the Respondent initiated disciplinary proceedings against her. Consequently, the Respondent dismissed her from service on 29.06.2013.

11. If the number of days for which the petitioner had worked from the year 2011 to June 2013, the month of her dismissal from service are taken into account it could be seen that the petitioner had worked only for a very few number of days. Though the petitioner had pleaded that she was ill, she did not try to substantiate it. It is pointed out on behalf of the Respondent that if a certificate from the ESI is provided the period of absence will not be treated as unauthorized absence. As seen from the evidence of the petitioner herself, distance from the quarters, which she is occupying to the ESI Hospital is only 4 or 5 kms. but she has not taken treatment from the ESI Hospital. The petitioner has produced Ext.W2, a copy of the Medical Diagnosis Report. However, this is of the date 17.03.2012. This will not show that she was suffering from any chronic illness. Thus, she had not justified her absence even before this Tribunal.

12. The counsel for the Respondent has referred to the decisions of the Apex Court in support of his argument that in such case of chronic absenteeism the employee is not entitled to be retained in service. The decision L&T KOMATSU LTD. Vs. N. UDAYAKUMAR reported in 2008 1 SCC 224, it was held that in the case of unauthorized absence for a long period, dismissal from service ought not have been treated to be harsh and interfered with by the Labour Court / High Court. The order of reinstatement given by these Courts were set aside and order of termination by the concerned authority was restored. The decision in RAJINDER KUMAR Vs. STATE OF HARYANA AND ANOTHER reported in 2016 1 LLN 267 (SC) where the employee was continuously absent though because of his chronic illness was dismissed from service and this dismissal was converted into Compulsory Retirement by the Apex Court. When considered in the background of the stand taken by the Apex Court regarding unauthorized absenteeism the petitioner does not deserve to be retained in service. However, considering the fact that she had been working in the Respondent establishment for a long time and that no complaint of any other misconduct had been there against her she is entitled to some leniency in the matter of punishment. Her dismissal from service can be converted to Compulsory Retirement from service.

In view of my discussion above, the punishment of the petitioner is altered and converted to Compulsory Retirement from service.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th July, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, K.C. Sudha
For the 2nd Party/Respondent : MW1, Sri R. Seenivasagam

Documents Marked:

On the Petitioner's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	-	Copy of Time Card
Ext.W2	-	Copy of Medical Diagnosis – Report
Ext.W3	-	Copy of Discharge Summary – Report
Ext.W4	-	Copy of Right to Information Act – Report
Ext.W5	-	Copy of Management Reply against RTI questions
Ext.W6	-	Copy of condone delay – Industrial Tribunal order letter
Ext.W7	-	Copy of letter to Management for Advance Fee

On the Management's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.M1	-	Copy of Certified Joint Standing Orders of the Respondent Mills
Ex.M2	18.05.2012	Show Cause Notice issued to the petitioner (received on 23.05.2012 and acknowledgement filed)
Ext.M3	29.05.2012	Explanation of the petitioner to the notice dated 18.05.2012
Ext.M4	28.05.2012	Notice of enquiry on the memo dated 18.05.2012 – Enquiry on 08.06.2012
Ext.M5	19.06.2012	Not attended the enquiry on 08.06.2012 – to provide further opportunity, enquiry posted to 29.06.2012 (received 21.06.2012 and acknowledgement filed)
Ext.M6	18.07.2012	Notice of enquiry – given final opportunity – posted the enquiry on 21.07.2012 – failing which she will be set exparte & proceeded received in person by petitioner on 20.07.2012
Ext.M7	21.07.2012	Enquiry proceedings – petitioner participated (total proceedings – three pages)
Ext.M8	04.08.2012	Findings of the Enquiry Officer
Ext.M9	06.08.2012	Second Show Cause Notice proposing punishment of dismissal from service enclosing copy of Enquiry proceedings Enquiry Officers Report Attendance details
Ext.M10	16.08.2012	Explanation of the petitioner for the second show cause notice dated 06.08.2012
Ext.M11	-	Attendance details from August 2012 to till date of Dismissal
Ext.M12	29.06.2013	Order – dismissing the petitioner effective from 29.06.2013 (enclosing copy of approval petition and cheque towards one month's notice pay) redirected to Sudha, W/o Rajan, KMCH, Room No. 302, 3 rd Floor, Avinashi Road, Coimbatore-641014
Ext.M13	04.07.2013	Order of dismissal – unopened cover returned – undelivered to the sender with the remarks “No such addressee at KMCH, Room No. 302, 3 rd Floor, Avinashi Road, Coimbatore-641014
Ext.M14	06.07.2013	Copy of the dismissal order displayed in Respondent Mills notice board on 06.07.2013

Ext.M15	21.07.2014	Memo filed by the counsel for Miss Radha before the Industrial Tribunal, Tamil Nadu, Chennai – in Approval Petition No. 57/2013 – Praying to grant approval without prejudice to her right to raise Industrial Dispute regarding the non-employment.
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नई दिल्ली, 22 जुलाई, 2016

का.आ. 1559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी कोयम्बटूर मुरुगन मिल्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 105/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/106/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 105/2015) of the Central Government Industrial Tribunal-cum-Labour-Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Coimbatore Murugan Mills and their workman, which was received by the Central Government on 22.07.2016.

[No. L-42012/106/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT
CHENNAI**

Tuesday, the 12th July, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 105/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Coimbatore Murugan Mills and their workman)

BETWEEN :

Sri P. Sivagurunathan : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent

M/s. Coimbatore Murugan Mills

(Unit of National Textiles Corporation Ltd.)

Mettupalayam Road, Post Box No. 7004

Coimbatore-641043

Appearance:

For the 1st Party/Petitioner : Sri G. Muthu

For the 2nd Party/Respondent : M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/106/2015-IR (DU) dated 01.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the dismissal of Sri P. Sivagurunathan by the Management of Coimbatore Murugan Mills, Coimbatore is legal and justified? If not, to what relief the petitioner is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 105/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent on 22.11.1983 and was working in the Cone Winding Department. He had been working to the satisfaction of his superiors and obeyed their orders. The Respondent issued Show Cause Notices to the petitioner in 2010 as well as in 2011. The Respondent had also supplied particulars of the Attendance Register from 2001 to 2012. These notices were issued with the intention to terminate the petitioner from service. Subsequent to the notices the Respondent conducted domestic enquiry without following the principles of natural justice. The petitioner was dismissed from service by order dated 29.06.2013. The dismissal of the petitioner from service is illegal. The petitioner is entitled to be reinstated in service with full backwages and continuity of service.

4. The Respondent has filed Counter Statement contending as below:

The petitioner, an employee of the Respondent, became a chronic absentee from the year 2001. He had worked only for a limited number of days in the years from 2001 to 2012. His absence was unauthorized. In the year 2011, out of 302 available working days the petitioner absented for 135.13 days and turned up for work only for 161.38 days. His absenteeism continued even in the year 2012. He worked only for 1 day in May 2012. On 18.05.2012 a Show-Cause Notice was issued referring to his habitual absence without leave from January 2011 and calling upon to show-cause why disciplinary action shall not be taken against him. He gave explanation that his absence was due to illness and also family problems. He worked for only 4 days in June 2012 and remained absent unauthorizedly on the rest of the working days. In July and August 2012 he had not turned up for work even for a single day. In the enquiry conducted the petitioner accepted the charge and pleaded that he was having breathing difficulty and had undergone operation in his eye. The Enquiry Officer gave report holding the petitioner guilty of the charge. He was given second Show-Cause Notice proposing the punishment of dismissal for which he gave explanation repeating his ill-health and family problems. The disciplinary action was kept in abeyance. However, there was no improvement in his attendance. He attended work only for 14.04 days in September 2012, for 14 days in October, for 8 days in November and 8.4 days in December, 2012. He continued to be absent on several days from January to June 2013 also. Consequently, the petitioner was dismissed from service by order dated 29.06.2013. the petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the averments in the Counter Statement and also reiterating his case in the Claim Statement.

6. The contention of the petitioner in the Claim Statement that the domestic enquiry was not conducted in accordance with the principles of natural justice was considered as a Preliminary Issue and was found against the petitioner.

7. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W8 and Ext.M1 to Ext.M72.

8. **The points for consideration are:**

- (i) Whether the action of the Respondent in dismissing the petitioner from service is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

9. Disciplinary proceedings had been initiated by the Respondent against the petitioner on account of his alleged unauthorized absence from work. Consequent to the report of the Enquiry Officer finding the petitioner guilty of the charge of unauthorized absence the Respondent had dismissed him from service. The petitioner has raised the dispute challenging his dismissal.

10. Disciplinary proceedings having been found conducted in a fair and proper manner it is to be seen from the documents pertaining to the enquiry proceedings whether the Respondent is justified in turning out the petitioner from service on the charge of unauthorized absence from work.

11. The documents pertaining to the initiation of the disciplinary proceedings and those of the enquiry proceedings are produced by the Respondent. Ext.M62 is the Show-Cause Notice issued to the petitioner pointing out that he was unauthorizedly absent from work for 135.1 days in the year 2011 and was also absent on most of the days from January to May 2012. Ext. M63 is the explanation given by the petitioner to Ext.M62 Show-Cause Notice. In this

he is not disputing his unauthorized absence in the year 2011 and 2012. By way of explanation he has stated that he was not able to attend work because of his family circumstances and also because he was afflicted with several ailments due to dust in the work place. He has further stated that there is improvement in his health and his family problems are solved and so he will be able to report for work continuously. Not satisfied with his explanation the Respondent directed to hold a domestic enquiry. Though the petitioner received notice of enquiry he did not participated in the enquiry on the first two occasions. Thereafter he participating in the enquiry and he admitted that he was unauthorizedly absent and also repeated the reasons given in his explanation as the reason for his absence. Ext.M67 is the findings of the Enquiry Officer holding the petitioner guilty of the misconduct of unauthorized absence from duty. Ext.M68 is the second Show Cause Notice issued to the petitioner by the Respondent proposing the punishment of dismissal from service. He submitted Ext.M69 explanation to this notice. In this he has stated that his absence was because of land dispute in his family, because of the illness of his mother and other members of the family and also because of his ill-health. He has further stated that all his problems are solved and he will be able to report for work in the future. Consequent to his explanation further proceedings was kept in abeyance by the Respondent. As could be seen from Ext.M70 the petitioner absented from work even after his assurance. From August 2012 to December 2012 and from January 2013 and June 2013 he had worked only for a very few days. The petitioner having failed to show any improvement in his work he was dismissed from service by Ext.M71, the order dated 29.06.2013.

11. It is apparent from the enquiry proceedings, the very admission of the petitioner during the enquiry proceedings and before and after that he was unauthorizedly absent from work for the period mentioned in Ext.W62. the petitioner has given explanation including his illness for his absence. He did not produce any material before the Enquiry Officer to show that he was unable to attend work on account of his illness. It is pointed out on behalf of the Respondent that in case treatment is sought from the ESI Hospital and a certificate is obtained from the Hospital, absence for the period covered by the certificate will not be treated as unauthorized absence. The petitioner does not seem to have taken any treatment from any ESI dispensary or Hospital.

12. Did the petitioner furnish any material before this Tribunal to show that he was unable to attend work on account of valid reasons? Ext.W2 to Ext.W4 are seen produced by the petitioner in his attempt to do this. However, these documents also are not of any help to the petitioner. Ext.W2 is a discharge summary report from Arvind Eye Hospital for cataract surgery done on him. However, admission of the petitioner in this Hospital for this purpose is on 16.07.2012, much after Show Cause Notice was issued to him for unauthorized absence. Ext.W3 and W4 are laboratory reports obtained on 19.02.2013, after explanation was given by him to the second Show Cause Notice proposing punishment of dismissal from service. These two reports will not make out that absence of the petitioner for the period mentioned in Ext.W62 would have been on account of any illness.

13. Apart from the unauthorized absence shown in Ext.M62 Show Cause Notice and the absence for the period after the proceedings was kept in abeyance as revealed by Ext.M17, the Respondent has produced large number of documents to prove that the petitioner has been repeatedly absenting from work for several days from the year 2000 onwards and he had met with minor punishment on such occasions. Ext.M2 to Ext.M61 are warning notices, show cause notices, etc. issued by the Respondent for unauthorized absence. explanations given by the petitioner for such notices, suspension orders made by the Respondent by way of punishment on account of unauthorized absence, etc. It could be seen from these documents that the petitioner was regularly irregular in attending his work and absence was the order for him rather than attendance in work. These past records of the petitioner are indicative of the fact that the petitioner is a habitual absentee and he would not be able to mend himself and be honest to his work. So it was only proper that the Respondent decided to take action against the petitioner for unauthorized absence.

14. The Respondent had dismissed the petitioner on account of his unauthorized absence. As could be seen from the Claim Statement and Proof Affidavit he had joined the Respondent establishment in 1982. There is no case for the Respondent that he had committed any misconduct of a severe nature other than his absence from work. When this aspect is taken into account it could be seen that rather than dismissal from service, Compulsory Retirement from service would be the proper punishment.

15. In view of the discussions above, the punishment of dismissal of the petitioner from service is set aside and is reduced to Compulsory Retirement from service.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th July, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Sri P. Sivagurunathan
For the 2 nd Party/Respondent	:	MW1, Sri R. Seenivasagam

Documents Marked:**On the Petitioner's side**

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	-	Copy of Time Card
Ext.W2	19.07.2012	Copy of Discharge Summary – Surgery
Ext.W3	-	Copy of Laboratory Report – Weakness
Ext.W4	-	Copy of Laboratory Report – breathing problems
Ext.W5	-	Copy of Right to Information Act – Report
Ext.W6	-	Copy of Management Reply against RTI questions
Ext.W7	-	Copy of condone delay- Industrial Tribunal Order Letter
Ext.W8	-	Copy of letter to Management for Advocate Fee

On the Management's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.M1	-	Copy of Certified Joint Standing Orders of the Respondent Mills
Ext.M2	07.01.2000	Warning notice issued for unauthorized absent for 10 days during the month of December, 1999
Ext.M3	09.05.2000	Warning Notice issued for unauthorized absent for 10 days during the month of April, 2000
Ext.M4	21.07.2000	Show Cause Notice issued for 13 days unauthorized absent during the month of July, 2000
Ext.M5	22.07.2000	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M6	26.07.2000	Suspended for 1 days as punishment on 31.07.2000
Ext.M7	08.08.2000	Show Cause Notice issued for 9 days unauthorized absent during the month of July, 2000
Ext.M8	16.08.2000	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M9	23.08.2000	Suspended for 1 days as punishment on 26.08.2000
Ext.M10	26.11.2000	Show Cause Notice issued for 9.4 days unauthorized absent during the month of October, 2000
Ext.M11	04.12.2000	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M12	05.12.2000	Suspended for 1 days as punishment on 11.12.2000
Ext.M13	20.01.2001	Show Cause Notice issued for 7 days unauthorized absent during the month of December, 2000
Ext.M14	24.01.2001	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M15	27.01.2001	Suspended for 1 days as punishment on 31.01.2001
Ext.M16	17.02.2001	Show Cause Notice issued unauthorized absent for the month of January 2001
Ext.M17	20.02.2001	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular.
Ext.M18	26.02.2001	Suspended for 1 days as punishment on 03.03.2001
Ext.M19	07.03.2001	Show Cause Notice issued for 9.4 days unauthorized absent during the month of February, 2001

Ext.M20	14.03.2001	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M21	16.03.2001	Suspended for 1 days as punishment on 21.03.2001
Ext.M22	16.04.2001	Show Cause Notice issued for 8 days unauthorized absent during the month of March, 2001
Ext.M23	18.04.2001	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M24	24.04.2001	Suspended for 1 days as punishment on 28.04.2001
Ext.M25	06.07.2001	Show Cause Notice issued for 8 days unauthorized absent during the month of June, 2001
Ext.M26	13.07.2001	Explanation – due to ill health he could not attend for work. Assured that in future he will be regular
Ext.M27	13.07.2001	Suspended for 1 days as punishment on 18.07.2001
Ext.M28	17.09.2001	Show Cause Notice issued for 8 days unauthorized absent during the month of August, 2001
Ext.M29	25.09.2001	Explanation – due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M30	08.10.2001	Suspended for 1 days as punishment on 16.10.2001
Ext.M31	08.03.2002	Show Cause Notice issued for 8.4 days unauthorized absent during the month of February, 2002
Ext.M32	21.03.2002	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M33	29.03.2002	Suspended for 1 days as punishment on 19.04.2002
Ext.M34	15.04.2002	Show Cause Notice issued for 9 days unauthorized absent during the month of March, 2002
Ext.M35	23.05.2002	Show Cause Notice issued for 9 days unauthorized absent during the month of March, 2002
Ext.M36	19.06.2002	Explanation – Due to ill health he could not attend for work. Assured that in future he will be regular
Ext.M37	27.06.2002	Enquiry notice issued to attend on 19.07.2002
Ext.M38	19.07.2002	Enquiry conducted and charges proved
Ext.M39	02.08.2002	Second Show Cause Notice issued proposing punishment of dismissal
Ext.M40	17.08.2002	Explanation – Due to Asthma he could not attend
Ext.M41	04.10.2002	Demoted as Badli w.e.f. 08.10.2002
Ext.M42	18.12.2002	Show Cause Notice issued for 9 days unauthorized absent during the month of October, 2002 and 10 days unauthorized absent during the month of November, 2002
Ext.M43	25.12.2002	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M44	11.01.2003	Suspended for 1 days as punishment on 20.01.2003
Ext.M45	06.01.2004	Show Cause Notice issued for 11 days unauthorized absent during the month of December, 2003
Ext.M46	20.01.2004	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M47	27.01.2004	Suspended for 2 days as punishment on 30.01.2004 and 31.04.2004
Ext.M48	06.04.2004	Show Cause Notice issued for 14 days unauthorized absent during the month of March 2004

Ext.M49	29.04.2004	Explanation – Due to ill-health he could not attend for work and requested not to initiate further disciplinary action
Ext.M50	07.06.2004	Show Cause Notice issued for 9 days unauthorized absent during the month of May 2004
Ext.M51	17.06.2004	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M52	28.07.2004	Show Cause Notice issued for 10 days unauthorized absent during the month of June, 2004
Ext.M53	07.08.2004	Explanation – Due to ill-health he could not attend for work. Assured that in future he will be regular
Ext.M54	25.10.2004	Warning notice issued for 8.4 days unauthorized absent during the month of September 2004
Ext.M55	08.02.2005	Show Cause Notice issued for 2 days unauthorized absent during the month of February, 2005
Ext.M56	26.02.2005	Explanation – Due to Asthma he could not attend for work. Assured that in future he will be regular
Ext.M57	19.01.2006	Warning notice issued for 95 days unauthorized absent during the year 2005
Ext.M58	12.05.2006	Show Cause Notice issued for frequent unauthorized absent during the month of January 2006 to April 2006
Ext.M59	22.05.2006	Explanation – Due to Asthma and family issues he could not attend for work. Assured that in future he will be regular
Ext.M60	14.06.2006	Warning notice issued for 8 days unauthorized absent during the month of May, 2006
Ext.M61	12.03.2006	Warning notice issued for 15 days unauthorized absent during the month of February, 2008
Ext.M62	18.05.2012	Show Cause Notice issued to the petitioner (received on 23.05.2012 and acknowledgement card)
Ext.M63	28.05.2012	Explanation of the petitioner to the notice dated 18.05.2012
Ext.M64	28.05.2012	Notice of enquiry on the memo dated 18.05.2012 –enquiry on 08.06.2012
Ext.M65	18.07.2012	Not attended the enquiry on 14.06.2012 – to provide further opportunity, enquiry posted to 27.07.2012 (received 21.07.2012 and acknowledgement field)
Ext.M66	08.06.2012 27.7.2012	Enquiry proceedings – petitioner participated (total proceedings –three pages)
Ext.M67	04.08.2012	Findings of the enquiry officer
Ext.M68	06.08.2012	Second show cause notice proposing punishment of dismissal from service, enclosing copy of (i) Enquiry Proceedings (ii) Enquiry Officers report (iii) Attendance details (Received by petitioner on 09.08.2012 – Acknowledgement filed)
Ext.M69	16.08.2012	Explanation of the petitioner for the Second Show Cause Notice dated 06.08.2012
Ext.M70	-	Attendance details from August 2012 to till date of Dismissal
Ext.M71	29.06.2013	Order – Dismissing the petitioner effective from 29.06.2013 (enclosing copy of approval petition & cheque towards one month's notice pay) Received by petitioner on 02.07.2013 acknowledgement card
Ext.M72	21.07.2014	Memo filed by the counsel for Mr. Sivagurunathan before the Tribunal, Tamil Nadu, Chennai – in Approval Petition No. 59/2013 – prejudice to grant approval without prejudice to grant approval without prejudice to his right to raise Industrial Dispute regarding non-employment

नई दिल्ली, 22 जुलाई, 2016

का.आ. 1560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत हेवी इलेक्ट्रिकल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 109/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2016 को प्राप्त हुआ था।

[सं. एल-42011/65/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd July, 2016

S.O. 1560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 109/2015) of the Central Government Industrial Tribunal-Cum-Labour-Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Heavy Electricals Ltd. and their workmen, which was received by the Central Government on 22.07.2016.

[No. L-42011/65/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT
CHENNAI
Friday, the 15th July, 2016**

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 109/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Heavy Electricals Ltd. and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
BAP Employees Union
Regd.No. 373/NAT
BAP/BHEL
Ranipet-632406

AND

The Executive Director : 2nd Party/Respondent
Bharat Heavy Electricals Ltd.
BAP, Ranipet
Ranipet-632406

Appearance:

For the 1st Party/Petitioner Union : M/s. R. Nandhakumar, Advocates
For the 2nd Party/Respondent : Sri F.B. Benjamin George, Advocate

A WARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/65/2015-IR (DU) dated 08.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the disciplinary proceedings initiated against Sri V. Udayakumar by the Management of BHEL, Ranipet and the punishment imposed is legal, justified, correct or not? If not, to what are the relief to which Sri V. Udayakumar is entitled?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 109/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The Petitioner is a registered Trade Union and is a participatory Union in the respondent establishment. Udayakumar, the Charge Sheeted employee is a member of the Petitioner Union. Udayakumar is working in the post of Senior Assistant, Grade-I in the respondent establishment. From the inception of employment in 1982 Udayakumar has been discharging his duties sincerely and efficiently without any complaints. Udayakumar's wife Poongodi was a Teacher and had worked in various institutions as a Teacher. She wanted to establish a charitable educational institution to the children of poor and downtrodden people. She formed a public charitable trust under the name and style Ranipet SIPCOT Hindu Cultural and Educational Trust and included Udayakumar and his Father, Velmurugan as Trustees. The Trust is not conducting any trade or business. The inclusion of Udayakumar as a Trustee is not as an employment. The Respondent issued a Charge Sheet dated 27.01.2009 to Udayakumar alleging that he is running a school which has been registered under a trust of which himself, his wife and father are members and that this is against Chapter-VI, Clause-51 of Standing Orders of the Respondent Company. Departmental enquiry was conducted against Udayakumar in spite of his explanation that he is not running any trade or business or undertaking any employment. While disciplinary proceedings were pending, the Respondent denied promotion to Udayakumar, in spite of several representations. The Respondent reopened the enquiry which has been concluded and examined witnesses. Earlier the Enquiry Officer has given a finding that the Trust and the School are run by Udayakumar's wife and he is not directly or indirectly doing any trade or business. After enquiry was reopened Udayakumar was found guilty of the charge against him and the punishment of reduction to two stages lower in the time scale of pay for a period of 3 years with cumulative effect was imposed on Udayakumar. Appeal filed by Udayakumar against the said order was dismissed. The dispute is raised challenging the punishment imposed on Udayakumar. There is no justification for the punishment. Udayakumar has not been conducting any trade or business. He has not violated any clause of Certified Standing Orders of the Respondent. An award may be passed setting aside the punishment imposed on Udayakumar and restore him with the original time-scale of pay received by him.

4. The Respondent has filed Counter Statement contending as below:

As per Clause-51 of Certified Standing Orders of the Respondent no employee shall except with the previous sanction of the Managing Director / Resident Director / General Manager or Chief of the Unit by whatever designation he is identified engage, directly or indirectly in any trade or business or undertake any employment. Udayakumar was found to be running a school alongwith his family members based on Trust Deed in which he is one of the Trustees. The petitioner has thus involved in private trade without information to the Management or its permission. This is in violation of Clause-51(1), 56(1) and 57(1) and (17) of the Certified Standing Orders. This school is run in SIPCOT, Ranipet and is charging fees from the students. Thus the main aim and objective of the said trust is running of a school and making profit out of the affairs of the school. The Vigilance Department of the Respondent received a complaint against Udayakumar alleging that he is running the said school. The petitioner is directly engaged in the business activity of the school. The Respondent has issued Charge Sheet to Udayakumar in view of his involvement in the affairs of the school. The Enquiry Officer who conducted the enquiry has found that the charges against Udayakumar are proved. The proviso to Clause-51 of the Standing Orders under which Udayakumar is taking shelter is not applicable in the case. Pending the disciplinary proceedings promotion of the petitioner was kept under a sealed cover. On the basis of the order of the Madras High Court in the Writ Petition by Udayakumar he has been promoted. In the enquiry Udayakumar was found guilty of the charge and punishment has been imposed on him. There is no necessity to interfere with the punishment. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegation in the Counter Statement and reiterating the case in the Claim Statement.

6. The evidence in the case consists of documents marked as Ext.W1 to Ext.W22 and Ext.M1 to Ext.M3.

7. **The points for consideration are:**

(i) Whether the punishment imposed by the Respondent on Udayakumar, the concerned employee is legal and justified?

(ii) What, if any is the relief to which Udayakumar is entitled to?

The Points

8. V. Udayakumar on whose behalf the dispute is raised by the Petitioner Union was working as Senior Assistant Grade-I in the respondent establishment. He had joined the establishment as an Apprentice in the year 1983 and had

been continuously working in the establishment. In the meanwhile he had been given appointment as Clerk and then promoted as Assistant Grade-I and thereafter Senior Assistant Grade-III.

9. On 27.01.2009 Charge Sheet which is marked as Ext.W8 has been issued on Udayakumar. The Charge Sheet states that Udayakumar is running a school which has been registered under a Trust in which he is one of the members and the other members of the trust are his wife and father and that he has indulged directly in a profession / business activity by being a member of the trust of the school without obtaining prior sanction from the competent authority and thus he has violated Clause-51(1), 56(1) and Sub-Clause (1) and (17) of Clause-57 of the Standing Orders of the establishment. Ext.W9 is the explanation given by Udayakumar to the charge. He has referred to the relevant provisions of the Standing Orders and has stated that he is not running any trade or business and is not undertaking any employment and has not committed violation of the relevant clauses of the Standing Orders as alleged.

10. Not satisfied with the explanation given by Udayakumar, the Respondent has initiated disciplinary proceedings against him. The Enquiry Officer had initially concluded the proceedings without examining any witnesses on the side of the Management. Later they wanted to reopen the matter and examine witnesses. Udayakumar had approached the Hon'ble High Court to quash the charge memo and the enquiry notice for reopening the enquiry by a Writ Petition and still another Writ Petition to promote him as per the promotion policy of the establishment. The Hon'ble High Court refused to interfere with the enquiry proceedings, the same having been started, but at the same time directed the Respondent to give promotion which is due to Udayakumar and accordingly he has been given promotion. The enquiry was subsequently concluded and the Enquiry Officer has submitted report finding Udayakumar guilty of the charge.

11. It is pointed out by the counsel for the petitioner that in view of the very clauses of the Standing Order it could be seen that Udayakumar has not committed any misconduct as alleged by the Respondent. The relevant clause of the Standing Orders based on which the Charge Sheet was issued to Udayakumar is as below:

Clause-51 - Private Trade or Employment

(i) No employee shall except with the previous sanction of the Managing Director / Resident Director / General Manager / Chief of the Union by whatever designation he is identified engage directly or indirectly in any trade or business or undertake any employment

Provided that an employee may without such sanction undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties thereby do not suffer but he shall not undertake or shall discontinue such work if so directed by the Managing Director.

12. There is a contention for the concerned employee that he has informed the Respondent about the formation of the Trust. According to him Ext.W1 is the copy of the letter that was sent to the General Manager giving the said information. However, this case of the petitioner that information was given certainly could not be accepted in the absence of any proof to show that such a letter was served on the Respondent.

13. The contention that is advanced on behalf of the concerned employee with force is based on the proviso to Clause-51 of the Standing Orders. As could be seen from the proviso sanction is not required for an employee to undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character. The only bar is that such work done by the employee shall not cause his official duties to suffer.

14. The argument that is advanced based on the proviso is that the concerned employee is only a Trustee of the establishment, that he is not doing the work of the Trust and that in any case he has not engaged himself in any trade or business or undertaken any employment. According to the employee the Trust which was formed by his wife with himself and father also as members are running a school which is a charitable institution. The school is not intended to make any profit but is intended only to give education to the downtrodden of the area. The relevant clauses of Trust Deed marked as Ext.W4 are referred to in this respect. The objects of the Trust seem to be manifold including the running of educational institutions, adult education centres, organizing Bala Gokulam, conducting medical camps, organizing cultural programs and activities, yoga camps, etc. The argument that is advanced on behalf of the Respondent is that the school is collecting fees from the students and therefore it is a profit making institution and so it will not come under the proviso to Clause-51 of the Standing Orders. However, the further clauses in the Trust Deed does not justify such a conclusion. Clause-14 of the Trust Deed states that the income and funds of the trust shall be utilized towards the objects and no portion of it shall be utilized for payment of trustees by way of profits, interests, dividends, etc. Clause-15 of the Trust Deed states that the trust shall not carry on any activity with the intention of any profit. Thus what is to be gathered from the Trust Deed is that the Trust is not a profit making establishment and its object is only to uplift the members of the Society with its multi-faceted activities. The charge sheet seems to have been issued to the concerned employee only on the basis that he is a member of the Trust. The charge does not state that the concerned employee had been making any profit out of the establishment. On the other hand, it states in a vague way that being a member of the Trust he has indulged indirectly in a profession / business activity without permission.

15. What is the basis on which the Enquiry Officer has found the concerned employee guilty? As stated, initially the Management did not examine any witnesses. Subsequently, the enquiry was reopened and two witnesses

were examined. The Management introduced new facts in the enquiry proceedings through these witnesses, though, those are not there in the charge. The attempt of the Management in introducing MWs 1 and 2 in the enquiry proceedings has been to establish that Udayakumar, the concerned employee has been misusing the passes that were given to him for his work outside the office. More curious is the fact that what is referred to by MW1 is something that is said to have taken place in the year 2004-2005, etc. The Management wants to make out that the passes were used by the concerned employee to proceed with the school activities. However, MW1 himself stated during his examination that he did not see the employee doing any school work and he only signed the passes in good faith. Only much after the charge sheet was issued in 2009 they felt that the concerned employee might have been using the time he received based on the passes for doing his school work. However, none of them ever thought of it when the passes were used. In the enquiry proceedings itself there is nothing to show that the passes were misused by the concerned employee. The evidence of MW2 also is regarding the passes issued. However the witness stated during his examination that the deviation from duty, if any on the part of Udayakumar never came to his knowledge. So the attempt of the Management to show that the concerned employee had misused the passes and had been using the time intended for his office work for the purpose of the school is not proved. In any case, such a case is not there in the charge also. The charge is only to the effect that he had been running an institution in violation of Clause-51 of the Standing Orders. There is no case in the charge that the petitioner used his official time for doing any work in relation to the Trust or the School under the Trust.

16. The Clauses 14 and 15 of the Trust Deed would show that the Trust is not intended for making any profit but only as a charitable institution. Such an institution will definitely come under the proviso to Clause-51 of the Standing Order. So there was no necessity for the concerned employee to get previous sanction from the Management to be a member of the Trust or do any charitable work in connection with the Trust. There is no justification in bringing him to a lower time scale of pay on the ground that he has been engaging in some trade or business or had undertaken some employment.

17. The counsel for the Respondent has argued that in any case this Tribunal is not competent to re-appraise the evidence in the enquiry proceedings since it is not a case of dismissal, discharge of the employee. No doubt, in the ordinary circumstances this Tribunal is not competent to re-appraise the evidence. However, in the present case the finding of the Enquiry Officer is so perverse in the sense that even a charge would not lie against the concerned employee in view of the proviso to Clause-51 of the Standing Orders. It is a case which requires interference by the Tribunal because of the perversity of the finding and the consequent order.

18. The proviso to Clause-51 of the Standing Orders states that the concerned employee shall discontinue the work of social or charitable nature even, if so directed by the Managing Director. It is clear from the proceedings that the Respondent does not approve the activity of the concerned employee in becoming a trustee of the Trust of which his wife and father are the other trustees and running an institution under it. So it is only proper that the petitioner removes himself from the Trusteeship of the Trust in question. The concerned employee is entitled to the relief claimed by him, however subject to the addenda that he should cease to be a member of the Trust

Accordingly, an award is passed as below:

The concerned employee shall give up his trusteeship in the trust

The Respondent shall restore the concerned employee to his original time-scale of pay within a week of his ceasing to be a member of the Trust

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th July, 2016)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	None
For the 2 nd Party/Respondent	:	None

Documents Marked:

On the Petitioner's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	30.07.1991	Letter from Sri V. Udayakumar to Respondent Management
Ext.W2	-	Extract of Clause-51 of the Certified Standing Orders

Ext.W3	13.06.2005	Complaint received by the Respondent
Ext.W4	13.02.2006	Letter from Inspector of Matriculation Schools alongwith Trust Deed
Ext.W5	-	“Not to Return” gate passes
Ext.W6	-	“On Duty Advice” gate passes
Ext.W7	16.01.2006	Reply given by Manager / HR to the Vigilance Department
Ext.W8	27.01.2009	Charge Sheet issued to Sri V. Udayakumar
Ext.W9	06.02.2009	Explanation given by Sri V. Udayakumar to the charges
Ext.W10	27.03.2010	Extract of proceedings before Enquiry Officer
Ext.W11	19.07.2010	Letter from Respondent for reopening the enquiry
Ext.W12	31.07.2010	Letter to Sri V. Udayakumar
Ext.W13	08.01.2011	Order made in WP No. 4371 & 4372 of 2011
Ext.W14	-	Extract of proceedings before Enquiry Officer from 28.04.2012 to 11.10.2012
Ext.W15	18.01.2013	Enquiry Report
Ext.W16	09.02.2013	Reply made by Sri V. Udayakumar to the Report
Ext.W17	27.05.2013	Penalty Advice
Ext.W18	08.07.2013	Grounds of Appeal made by Sri V. Udayakumar to the Appellate Authority
Ext.W19	23.09.2013	Order made in WP No. 26341/2013
Ext.W20	14.12.2013	Order made by the Appellate Authority
Ext.W21	12.05.2014	Petition made by the petitioner under 2k of the ID Act
Ext.W22	13.03.2015	Failure report in conciliation proceedings

On the Management side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.M1	07.06.2013	Letter of the Petitioner with Annexures
Ext.M2	18.04.2014	Letter of the Respondent to Petitioner
Ext.M3	29.04.2014	Letter of the Respondent to Petitioner

नई दिल्ली, 25 जुलाई, 2016

का.आ. 1561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखनी के पंचाट (संदर्भ सं. 20/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आई आर (सी - II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25th July, 2016

S.O. 1561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID 20/2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Coimbatore Murugan Mills and their workman, which was received by the Central Government on 18.07.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL.DIST. & SESSIONS COURT, GODAVARIKHANI.****Present:** SRI G.V.KRISHNAIAH, Chairman-cum-Presiding Officer.**INDUSTRIAL DISPUTE No. 20 OF 2015**Wednesday, the 13th day of April, 2016**Between :**

Janagam Mallaiah, S/o. Bakkaiah, E.No. 2622002, Aged about 56 years,
Occ: General Mazdoor, RK-6 Incline, R/o. Singapuram Mandal,
Mancheril Dist. Adilabad District.

...Petitioner

AND

1. The General Manager, Singareni Collieries Co.Ltd., Sreerampur Area, Dist.Adilabad.

2. The Chief Managing Director, Singareni Collieries Co.Ltd., Red Hills,
Singareni Bhavan, Lakdikapool, Hyderabad.

... Respondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri K.Sudhakar Reddy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner by the respondent praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages or VRS, GHS or VRS LPE, 2008.

2. Respondent issued charge sheet to petitioner vide office order dt.5-5-2005 with the following charge.

CHARGE :

“Habitual absence from duty without sufficient cause” .

3. Petitioner challenges his dismissal order stating that he was appointed on 20-2-1978 and he discharged his duties to the fullest satisfaction of his superiors till upto removal from service dt. 1-3-2006. Petitioner worked for 26 years long service in the underground mine. Later his health was deteriorated in 2004 and 2005. Due to which petitioner was constrained to abstain to his duties. Petitioner requested the management to consider the case under VRS, GHS of company as the petitioner is fit person to claim benefits and the company also initiated VRS LPE scheme of Rs.5.00 Lakhs to each employee and the company considered the cases of several cases under VRS 2000, but in the instant case, the company adopted unfair labour practice and victimized petitioner. That the salary of petitioner is Rs.20,000/- PM at the time of his removal and petitioner is going to retire on 15-12-2016. Petitioner is facing a lot of problems because of his illegal removal. Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate. Hence, petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. Petitioner was dismissed from service in the year 2006. Petitioner kept quiet for all these years and filed this petition after lapse of 9 years which is barred by limitation U/Sec.2A (3) of Industrial Disputes Amendment Act, 2010. As per the service register petitioner's age is 23 years as on 16-02-1978 (date of birth is 16-2-1955). Therefore the petitioner has already attained the age of superannuation as on 28-02-2015.

Petitioner was a chronic absentee and had not put in required musters of 190 under the Mines Act since 2001. The muster particulars of petitioner from 2001 to 2004, which shows that petitioner was never regular to his duties, are as follows:-

Sl.No.	Year	No. of musters.
1.	2001	166
2.	2002	174

3.	2003	162
4.	2004	87
5.	2005	71

Petitioner had put in only 87 musters in the year 2004, he neither informed the cause for his absence nor reported sick. Petitioner did not avail the facility of treatment in the company hospital and simply claiming that he was sick. As such, petitioner was issued charge sheet. Respondent conducted enquiry by following the principles of natural justice. Respondent issued show cause notice to petitioner. Petitioner submitted his explanation to the show cause notice. Not satisfied with the explanation submitted by petitioner and basing on the enquiry report, respondent dismissed the petitioner from service vide office order dt.23-02-2006. Aggrieved by the dismissal order, petitioner preferred appeal to the appellate authority who after going through the past record found no extenuating circumstances to set aside the penalty of dismissal, confirmed the penalty of dismissal. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

5. During the course of hearing, Ex.W-1 to Ex.W-7 and Ex.M-1 to Ex.M-9 are marked.

6. Counsel for the petitioner filed memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled to.

7. Heard both sides. Perused the material papers on record.

8. Written arguments are filed by both parties.

9. The points for consideration are:-

1. Whether the petition is barred by limitation?

2. Whether the petitioner is entitled to be reinstated?

10. **POINT No.1:-** Petitioner was dismissed from service w.e.f., 1-3-2006 and the appeal preferred by him was rejected by order dt.20-2-2007. Sec.2 of ID Act as prevalent in this State does not prescribe any limitation. Period of 3 years provided under Sub-Sec.3 of Central enactment is not made applicable in this State. Further under Sec.5 of Limitation Act, the delay if any can be condoned taking into consideration the explanation offered by the petitioner in the main petition itself and that filing of formal application for condonation of delay is not sine qua non for exercising the power to condone the delay available to the authorities, as per the decision of the Hon'ble High Court reported in 2015 (2) ALT 534 between Gadde Krishna Murthy and others Vs., Mandal Revenue Officer, Seethanagaram, East Guava District & others. Further Sec.5 and Article 137 of Limitation Act are not applications confined to CPC and the words "any other applications" under Article 137 would be any application under any Act made to a court, as per the decision of the Hon'ble High Court reported in 2014 (6) ALT 543 between Desam Venkateswara Reddy and others Vs., Special Deputy Collector & Competent Authority (Land Acquisition), Gas Authority of India Ltd., Vijayawada and another. Judgment of Apex Court in CST Vs. Madanlal Das & another reported in 1976 (4) SCC 464 applies Sec.12 (2) of Limitation Act to a proceeding under UP Sales Tax Act. Considering all the above facts, I hold that this petition cannot be thrown out on the ground of bar of limitation. This point is accordingly answered in favour of petitioner.

11. **POINT No.2:-** Admittedly the petitioner was appointed in the respondents' company as worker trainee on 20-2-1978 and his services were regularized as Coal Filler on 1-7-1979. Later he was drafted as General Mazdoor till his dismissal from service w.e.f., 1-3-2006. Thus, petitioner had put in service of more than 27 years. As per the attendance particulars furnished by the respondents' company at Para No.8 of the counter, petitioner put in (166) musters in 2001, (174) musters in 2002, (162) musters in 2003, (87) musters in 2004 and (71) musters in 2005. The charge levelled against petitioner is that petitioner had put in only (87) musters in the year 2004 and he was habitually absented to duties without sufficient cause. The charge sheet is marked as Ex.M-1. Petitioner during the course of enquiry under Ex.M-3 deposed that due to ill-health and knee pains, he absented to duty in 2004 and took treatment in private nursing home. Explanation of petitioner under Ex.M-6 is also on the same lines. When the petitioner pleaded ill-health for his absence, even though the petitioner did not take treatment from the SCCL hospital, the version of the petitioner can be believed regarding his ill-health, taking into consideration his previous satisfactory service of 27 years. The work of the petitioner is hard manual work in the underground mine. Therefore, absence due to ill-health after 27 years service has to be considered taking into account the nature of duties discharged by the workman for about 27 years without any blemish. It seems that the 1st respondent miserably failed to apply his mind to the facts of the case and long service of 27 years put-in by petitioner; and mechanically imposed the capital punishment of dismissal from service in a routine manner. The attitude of the 1st respondent is highly arbitrary and it is a clear case of unfair labour practice and victimization. The manner, in which the petitioner case was dealt with, showed a prejudiced attitude but not a reasonable attitude to a workman. In a DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT

REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, the following guide lines were laid down in the matter of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.
9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.
12. Keeping in view the above observations which have taken into consideration all aspects of the punishment particularly the extreme penalty of the dismissal, I hold that the punishment of dismissal from service was uncalled for and unjustifiable. This is a fit case where this Court can exercise discretion U/Sec.11-A of ID Act to modify the extreme punishment of dismissal appropriately.
13. Admittedly petitioner already attained the age of superannuation as on 28-2-2015 as mentioned at Para No.17 of the counter filed by the 1st respondent. Considering the facts and circumstances of the case, I hold that it would be to treat the petitioner as if he voluntarily retired from service as on the date of his last working day prior to his dismissal from service by order dt.23-2-2006. The petitioner is entitled to consequential retirement benefits for the service rendered by him which are available to a voluntarily retired employee.

14. In the result, the order of dismissal dt.23-02-2006 marked as Ex.M-7 is set aside. The respondents' company is directed to treat the petitioner as if he were voluntarily retired from service on the last working day prior to his dismissal from service. The petitioner is entitled to consequential retirement benefits for the service rendered by him which are available to a voluntarily retired employee.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 13th day of April, 2016.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management :-

-Nil-

EXHIBITS

For workman:

Ex.W-1	Dt.	24-09-2014	Demand letter
Ex.W-2	Dt.	-do-	Application for supply of documents
Ex.W-3	Dt.	31-10-2014	Letter issued to petitioner by AGM (IE) & PIO, Singareni Area Information regarding RTI Act.
Ex.W-4	Dt.	05-05-2005	Charge sheet
Ex.W-5	Dt.	28.07.2005	Enquiry proceedings
Ex.W-6	Dt.		Enquiry report
Ex.W-7	Dt.		Dismissal Order

For Management :

Ex. M-1	Dt.	05.05.2005	Charge sheet
Ex. M-2	Dt.	19.07.2005	Enquiry notice
Ex. M-3	Dt.	28.7.2005	Enquiry proceedings
Ex. M-4	Dt.	29.7.2005	Enquiry report
Ex. M-5	Dt.	31.08.2005	Show cause notice
Ex. M-6	Dt.	31.08.2005	Show cause notice
Ex. M-7	Dt.	23.02.2006	Dismissal order
Ex. M-8	Dt.	23.02.2006	Representation of petitioner to the appellate authority
Ex. M-9	Dt.	20.02.2007	Letter issued to petitioner by the Director (PA and W) confirming the penalty of dismissal

नई दिल्ली, 25 जुलाई, 2016

का.आ. 1562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखन्नी के पंचाट (संदर्भ सं. 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.07.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आई आर (सी एम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 25nd July, 2016

S.O. 1562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID No. 14/2015) as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 18.07.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT -CUM-VI ADDL.DIST. & SESSIONS COURT, GODAVARIKHANI.

Present: SRI G.V.KRISHNAIAH, Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No.14 OF 2015

Friday, the 13th day of May, 2016

Between:

EDLA MALLAIAH, Ex.Coal Filler, S/o. Durgaiah, Age 54 years,
R/o.Gopanipalle village of Odela Mandal, Dist.Karimnagar (T.S).

... Petitioner

AND

1. The General Manager, SCCo.Ltd., GDK.No.6B Incline, District: Karimnagar (T.S).
2. The General Manager, SCCo.Ltd., Ramagundam Area-I, PO: Godavarikhani, District: Karimnagar (T.S).
3. The Chairman & Managing Director, SCCo. Ltd., PO: Kothagudem,
District: Khammam (A.P.)

...Respondents

This case coming before me for final hearing in the presence of Sri Ganta Narayana, Advocate for the petitioner and of Sri K.Sudhakar Reddy, Advocate for the respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:-

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D., Act challenging the dismissal of the petitioner by the respondents praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages.
2. Petitioner was dismissed from service by the respondents vide office order dt.18/27-12-1997 with the following charge:-

CHARGE:-

“25(25) Habitual late attendance for habitual absence from duty without sufficient cause during the year 1996”.

3. Petitioner challenges his dismissal order as follows. He was selected and appointed as Badli Filler in the year 1978 and he was promoted as Coal Filler. Ever since the date of petitioner's appointment, he served the respondents company effectively and put-in more than (200) physical musters every year as against the minimum (100) musters. Petitioner suffered ill-health from the year 1995 onwards as the underground atmosphere and coal dust was not suited to him. Petitioner underwent prolonged medical treatment in the hospitals of respondents' company and other referral hospitals. But due to under ground work, his health was not cured completely, he became very weak and his health was completely deteriorated during the year 1990. The respondents issued charge sheet and dismissed him from service vide office order dt.18/27-12-1997 w.e.f., 25-12-1997 which is highly arbitrary and illegal. That the enquiry was not conducted fairly and properly without giving opportunity to petitioner to defend himself. That the dismissal order was passed by 2nd respondent straight away without issuing any kind of prior show cause notice proposing the said capital punishment of dismissal from service. Petitioner already crossed the upper age limit for any fresh job. Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. Petitioner was dismissed from service in the year 1997. Petitioner kept quiet for all these years and filed this petition after lapse of 18 years which is barred by limitation U/Sec.2A(3) of Industrial Disputes Amendment Act, 2010. According to the service

record of petitioner his date of birth was 15-01-1955 and he already attained the age of superannuation as on 15-01-2015. Petitioner was appointed in the respondents company as Badli Filler on 11-02-1977 and later he was promoted as Coal Filler. Petitioner had put-in 023 musters in the year 1995, 011 musters in 1996 and 007 musters in 1997. Petitioner neither informed his illness nor submitted any documentary evidence in proof of his illness. Petitioner did not avail the facility of taking treatment in the respondents' company hospitals, but he simply claimed that he was under sick during the charge sheeted period. Petitioner remained absent from duty without sanctioned leave, permission or sufficient cause during the calendar year 1996 and he had put-in only 011 musters. Charge sheet dt.9-1-1997 was issued to petitioner for his habitual absence from duty during the year 1996. Petitioner acknowledged the charge sheet and submitted his explanation dt.23-1-1997 which was found not satisfactory. Enquiry notices were sent to petitioner by RPAD which were returned un-served. As such, enquiry notices were published in Andhra Jyothi daily paper on 5-9-1997 advising petitioner to attend enquiry fixed on 7-9-1997. Since he did not turn-up for enquiry, exparte enquiry was conducted. The charge levelled against petitioner was amply proved in the regular domestic enquiry. Therefore, petitioner was dismissed from service after due procedure. Petitioner has neither informed his illness nor submitted any documentary evidence. He has not reported sick at any of the company hospitals. He did not avail the fair opportunities provided to him. He already attained the age of superannuation on 15-1-2015. He was dismissed by order dt.23-12-1997 and filed this I.D., in the year 2015 after lapse of 18 years. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

5. During the course of hearing, Ex.W-1 to Ex.W-7 and Ex.M-1 to Ex.M-9 are marked.

6. Counsel for the petitioner filed Memo U/Sec. 11-A of I.D., Act stating that he is not challenging the validity of domestic enquiry conducted by the respondent and prayed this Tribunal to decide the quantum of relief to which the petitioner is entitled.

7. Heard both sides. Perused the material papers on record.

8. Both sides have filed written arguments.

9. The point for consideration is:-

Whether the petitioner is entitled to any relief?

10. **POINT:-** Admittedly the petitioner put-in 23 musters during the year 1995, 11 musters during the year 1996 and 07 musters during the years 1997. He was issued charge sheet dt.19-1-1997 for his habitual absence from duties and putting only 11 musters during the year 1996. The charge sheet is marked as Ex.M-1. In his explanation under Ex.M-2, petitioner stated that he met with mine accident on 2-1-1996 and sustained injuries, that he fell sick and he was under treatment and that he may be permitted to resume duty. Petitioner failed to submit any single document to show that he was suffering from any illness or that he met with accident. The enquiry notices under Ex.M-3 were returned un-served and inspite of paper publication under Ex.M-4, petitioner failed to attend the domestic enquiry. The enquiry proceedings clearly go to show that the charge levelled against petitioner was amply proved. He put-in only 11 musters during the year 1996, which shows his disinterest towards duty. Even during the previous year 1995, he put-in only 23 musters. Admittedly petitioner was dismissed from service vide order dt.18/23-12-1997 and he filed this I.D., in the year 2015 i.e., after a lapse of 18 long years. He already attained the age of superannuation on 15-1-2015. If petitioner has got any grievance against the dismissal order, he would have approached this court within a reasonable period.

11. In view of my above discussion and the documentary evidence on record, I hold that the charge is amply proved against petitioner and the punishment of dismissal is not disproportionate. I further hold that it is not a fit case to exercise the discretionary powers vested U/Sec.11-A of I.D., Act and petitioner cannot be granted any relief at this belated period of 18 long years. Hence, this petition is liable to be dismissed, for want of merits. Accordingly, the petition is dismissed.

12. In the result, the petition is dismissed.

Typed to my dictation by Typist, corrected and pronounced by me in open Court, on this the 13th day of May, 2016.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS**For workman:**

Ex.W-1	Dt.	26-12-2014	Letter issued to petitioner by respondent - Public Information Officer.
Ex.W-2	Dt.	12-12-2014	Letter issued to Addl.G.M., (I.E), RG-I & Public Information Officer by SOM, GDK.11 Incline.
Ex.W-3	Dt.	19-01-1997	Charge sheet
Ex.W-4	Dt.	18/23-12-1997	Dismissal order
Ex.W-5	Dt.	26-12-1997	Memo for petitioner's name removal from rolls.
Ex.W-6	Dt.	05-09-2014	Demand letter
Ex.W-7	Dt.	03-03-2015	Delivery report of demand letter by Post Master.

For Management:

Ex.M-1	Dt.	19-01-1997	Charge sheet
Ex.M-2	Dt.	23-01-1997	Explanation to the charge sheet
Ex.M-3	Dt.	29-05-1997	Undelivered postal returned cover with Acks.,
Ex.M-4	Dt.	05-09-1997	Paper publication of enquiry notice published in Andhra Jyothi Telugu newspaper.
Ex.M-5	Dt.	07-09-1997	Enquiry proceedings
Ex.M-6	Dt.	12-10-1997	Enquiry report.
Ex.M-7	Dt.	26/29-10-1997	Show cause notice
Ex.M-8	Dt.	14-12-1997	Paper publication of show cause notice published in Andhra Jyothi Telugu daily newspaper.
Ex.M-9	Dt.	18/23-12-1997	Dismissal order.

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1563.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा **01 अगस्त, 2016** को उस तारीख के रूप में नीयत करती है, जिनको उक्त अधिनियम के अध्याय-4(44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 (धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं) के उपबंध **राजस्थान** राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:

क्रम स.	जिले का नाम	क्रम स.	जिले का नाम
1.	अजमेर	15.	जैसलमेर
2.	अलवर	16.	झालावाड
3.	बांसवाडा	17.	झुन्झुनु
4.	बाडमेर	18.	जोधपुर
5.	भरतपुर	19.	कोटा
6.	भीलवाडा	20.	नागौर
7.	बीकानेर	21.	पाली
8.	बूंदी	22.	राजसमन्द
9.	चित्तौडगढ़	23.	सवाई माधोपुर
10.	दौसा	24.	सीकर
11.	धोलपुर	25.	सिरोही
12.	डूंगरपुर	26.	श्री गंगानगर
13.	हनुमानगढ़	27.	टोंक
14.	जयपुर	28.	उदयपुर

[सं. एस-38013/29/2016-एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 20th July, 2016

S.O. 1563.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2016 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Rajasthan namely: -

S. No.	Name of District	S. No.	Name of District
1.	AJMER	15.	JAISALMER
2.	ALWAR	16.	JHALAWAR
3.	BANSWARA	17.	JHUNJHUNU
4.	BARMER	18.	JODHPUR
5.	BHARATPUR	19.	KOTA
6.	BHILWARA	20.	NAGAU
7.	BIKANER	21.	PALI
8.	BUNDI	22.	RAJSAMAND
9.	CHITTAURGARH	23.	SAWAI MADHOPUR
10.	DAUSA	24.	SIKAR
11.	DHOLPUR	25.	SIROHI
12.	DUNGARPUR	26.	SRI GANGANAGAR
13.	HANUMANGARH	27.	TONK
14.	JAIPUR	28.	UDAIPUR

[No. S-38013/29/2016-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 20 जुलाई, 2016

का.आ. 1564.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा-(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 अगस्त, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-IV (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय- V और VI (धारा-76 की उप धारा-(1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध जम्मू एवं कश्मीर राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्

क्र. सं.	जिलों के नाम
1.	श्रीनगर
2.	बड़गाम
3.	पुलवामा
4.	रियासी
5.	ऊधमपुर
6.	जम्मू
7.	सांबा
8.	कटुआ

[सं. एस-38013/30/2016-एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 20th July, 2016

S.O. 1564.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2016, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following entire districts (including already implemented areas) in the State of Jammu & Kashmir namely:-

Sr. No.	Name of the District
1.	Srinagar
2.	Budgam
3.	Pulwama
4.	Reasi
5.	Udampur
6.	Jammu
7.	Samba
8.	Kathua

[No. S-38013/30/2016-S.S.I]

AJAY MALIK, Under Secy.